FEDERAL AVIATION NOISE POLICY

(101-86)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

SEPTEMBER 25, 27; OCTOBER 2, 4, 1990

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VII

SUMMARY OF SUBJECT MATTER

FEDERAL AVIATION NOISE POLICY

September 25, 27 & October 2, 4
2167 Rayburn House Office Building

The hearings contemplate a comprehensive review of policy on aviation noise.

Under the existing system of aviation noise regulation, decision making power is shared by the Federal government, local governments, airport authorities and airlines.

o Decisions to build new airports and expand the capacity of existing airports, a critical factor in noise impact, are basically local decisions, based largely on local economic and environmental considerations. The Federal government has some ability to influence these decisions through its power to grant funds for airport development, and through its power to determine whether the air traffic control systems can accommodate operations from a new or expanded airport.

o Once airport capacity has been developed, the airport proprietor has power to restrict the use of that capacity to limit noise impact. However, the Federal government has the power to stop local operating restrictions on a variety of grounds, including that restrictions are an undue burden on interstate commerce, or that

local restrictions are preempted by Federal regulations.

o Other locally based measures to limit noise impact, such as restrictions on the use of land near airports, or soundproofing of buildings near an airport, are made by local government (in many cases the unit of local government controlling the airport is not the same as the unit with authority to control land use near the airport). The Federal government has some power to influence these decisions through the grant or denial of funds for noise abatement planning and programs.

o The routes which aircraft follow for takeoffs, landings, and enroute operations are determined by the Federal government, primarily on the basis of safety and efficiency. The government also gives weight to local environmental concerns, particularly if these can be accommodated without compromising safety.

o The Federal government determine the permissible level of noise emissions for aircraft.

o Subject to all the above constraints, airlines and other aircraft operators determine the level of operations they conduct.

The remainder of this summary will focus on the policies

followed by the Federal government on aviation noise, and proposals for changing these policies.

1 - Federal Policy on Aircraft Noise Emissions.

In 1968, FAA was given authority to regulate aircraft noise emissions, including the noise emission levels of manufactured aircraft, and the emission levels of aircraft operated by airlines and others. The scheme of regulation which FAA has developed establishes three basic noise levels, Stages 1 (the noisiest) to Stage 3. In general, Stage 1 aircraft are of those manufactured in the late '60's and early '70's, 707's, DC-8's, 727's and DC-9's.* Stage 2 levels are achieved by more recent 727's and 737's and retrofitted or reengined Stage 1 aircraft. Stage 3 levels are achieved by 1980's aircraft, such as MD-80's, Airbus Aircraft, 757's and 767's. Today, although it may be technically legal to manufacture certain types of aircraft at Stage 2 levels, all aircraft are now manufactured at the Stage 3 level.

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*Aircraft which meet Stage 1 or 2 levels as originally manufactured can often be reengineered or retrofitted to reach a higher noise stage.

The FAA's noise regulations have prohibited the operation of Stage 1 aircraft since 1988. The replacement of Stage 1 aircraft has reduced the number of persons living in seriously noise impacted areas from 7 million in the mid '70's to 3.2 million today. However, current regulations allow the airlines to operate Stage 2 aircraft indefinitely. Airports and citizens groups want further progress in noise reduction and in recent years there has been considerable interest in establishing regulatory requirements for a phase-out of Stage 2 aircraft.

As of May 1990, approximately 2,350 aircraft, 60% of the U.S. airline fleet, were Stage 2 aircraft. FAA has estimated that without regulatory intervention, the airline fleet would become an all Stage 3 fleet by 2010.

FAA has also estimated the benefits of regulatory intervention to speed up the phase out of Stage 2 operations. Currently about 3.2 million individuals reside within areas exposed to noise levels which FAA considers incompatible with residential usage.* If no regulatory action is taken, FAA estimates that in the year 2000,

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*A later section of this memorandum explains noise measurement in greater detail.

from 2.2 to 3.0 million persons will reside in these areas. If Stage 2 aircraft are phased out by the year 2000, the number of persons in severely noise-impacted areas will be reduced to 1.0 million.

The need for United States regulatory action is also affected by international actions. The European Community has already enacted a Stage 2 non-addition rule, effective November 1, 1990, and is close to adopting a Stage 2 operating ban. These regulatory actions may cause an increasing number of Stage 2 aircraft to be added to the U.S. fleet, creating additional pressure for a Stage 2 cut-off.

If a requirement for an all-Stage 3 fleet is imposed, the airlines could comply by replacement of Stage 2 aircraft or by reducing emissions from Stage 2 aircraft. There are two basic approaches to reducing the noise level of Stage 2 jet aircraft.

First, there is what is known as "hushkitting". Hushkitting involves modifying one or more engine components to reduce noise emissions. At this time, it appears that the vast preponderance (80-90%) of Stage 2 aircraft will be able to achieve Stage 3 standards through hushkitting programs already certificated by the FAA or expected to be certificated in the next 1-2 years. These hushkits cost in the range of $1.5-$3.0 million per aircraft.

The other approach to reducing noise emissions is "re-engining," in which older aircraft engines are replaced with newer technology engines. FAA has approved a re-engining conversion for 727-200s. This would cost $9-10 million per aircraft. There are also benefits of power and efficiency that accrue to aircraft that have been re-engined.

2 - Operating Restrictions Imposed by Local Airports.

a) Power of Airport Proprietor to Impose Restrictions

Under the current regulatory system, airport proprietors may restrict aircraft operations to limit noise, so long as these restraints are not inconsistent with certain federal interests, further discussed below. Airports are pressed to impose these restrictions by residents of noise-impacted areas near the airport. In addition, if an airport fails to impose restrictions it may be liable for damages to property owners for loss of property value or other damages caused by aircraft noise.

In recent years there has been an escalation of airport restrictions. FAA analysis indicates that most major airports either have or are seriously considering the adoption of restrictions. A 1986 FAA study of hub airports showed that 39 airports had curfews (either complete or prohibiting nighttime operation of noisier aircraft) and that 47 airports had other

limitations on operations based on noise levels.

To give a flavor of the type of restriction involved:

o Boston Logan has operating restrictions prohibiting the operation of Stage 2 aircraft at night unless exempted. There are prior approval procedures for airlines wishing to use aircraft types not currently operated by them, to ensure that the new aircraft are not noisier than those currently in operation.

o Raleigh Durham has adopted a noise rule that will result in each operator having a noise budget for its total operations which will decrease over time.

o Los Angeles International Airport is considering requirements for a ban on additional Stage 2 aircraft and a phase-out of existing Stage 2 aircraft, including requiring an all Stage 2 fleet by the year 2000, and a prohibition of Stage 2 operations between midnight and 6:30 a.m. by 1996.

In addition to these types of restrictions major airports have imposed a wide range of noise abatement operating restrictions, such as restricting use of particular runways, requiring arrival or departures over water, prohibiting engine run-ups in certain areas, etc.

There is a widespread belief that local restrictions will increase substantially in the next few years. As more airports limit Stage 2 operations, there will be great pressure on other airports to follow suit, to prevent their airport being subject to increased noise from the shift of Stage 2 aircraft banned at other airports.

Local restrictions raise a number of national concerns.

First, there is the impact of local restrictions on the capacity of the national airport system. For example, FAA estimates that capacity at metropolitan New York airports could be increased by 22% if existing noise restrictions on aircraft departures and arrivals were eliminated. An important consideration is that restrictions designed to meet the needs of one community will also affect other communities. A curfew on arrivals at one airport will prevent flights from departing other cities several hours earlier.

Requirements for a transition to quieter aircraft also increase airline costs and fares to the public. These restrictions also may affect the competitive balance in the industry. Airlines currently relying on a fleet of Stage 2 may find the costs of transition prohibitive. New entry may be infeasible if a prospective new entrant cannot afford the more expensive Stage 3 aircraft.

b) Federal Limitations on Local Restrictions

Under current law, the Federal courts will set aside airport restrictions which are not a reasonable response to a demonstrable noise problem, or which are arbitrary and discriminatory, or an undue burden on interstate commerce. Procedurally, there is no requirement that an airport get advance FAA approval for a restriction. The airport is free to impose the restriction, and FAA must then seek to stop the restriction, either through the courts or through the withholding of federal financial assistance.

As local restrictions increased during the 1980's, the Executive Branch often was reluctant to challenge these regulations, apparently because of a general Administration policy (known as the "New Federalism") of giving more freedom to state and local governments. Under the Bush Administration, FAA appears to be taking a more active role in trying to influence local airport restrictions.

There has been considerable interest, particularly on the part of airlines, in increasing the role of the Federal government in dealing with local restrictions. One method would be to impose federal prohibitions (legislation would probably be required) on certain types of local restrictions. For example, the Federal government could prohibit airports from imposing any limitations on operations with Stage 3 aircraft. An alternative approach would be

to establish new procedures, for example requiring prior FAA approval before any restrictions (or certain types of restrictions) could be imposed.

Although airlines and others have been proposed an enhanced federal role for many years, these proposals have never been supported by the Executive Branch. It is generally believed that the Office of Management and Budget is reluctant to support any regulatory or legislative proposals which contemplate limitations on the authority of airport proprietors to restrict the operation of noisy aircraft. OMB's apparent concern is that such action by the federal government would make the government liable for loss of property values caused by the operation of noisy aircraft.

By way of background, the landmark case on liability for damage from aircraft noise is the Supreme Court's 1962 decision in Griggs v. Allegheny County. In that case the court held that the operation of aircraft from Pittsburgh Airport at low altitudes over a homeowner's property resulted in the taking of an air easement. Under the Fourteenth Amendment private property may not be taken for public use without just compensation. The court considered whether the "taking" involved in the case was carried out by the airport proprietor, the airlines or the Federal government. The conclusion was that the "taker" was the airport proprietor because

> "Respondent [the airport proprietor] decided, subject to the approval of the C.A.A. [FAA's predecessor], where the airport would be build, what runways it would need, their direction and length, and what land and navigation easement would be needed. The Federal government takes nothing: it is local authority which decides to build an airport vel non, and where it is to be located."*

Those who are concerned about increased liability from increased federal regulation believe that if the Federal government takes away local authority to reduce noise it will be the Federal government that is making the basic decisions on how airports will be operated. Accordingly, it would be the Federal government that would be "taking" easements and responsible for compensation. A related argument would be that even if the courts would not hold the Federal government liable, fairness would require that the Federal government accept liability if the Federal government is preventing airports from taking action to limit their liability.

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*There have also been some state court decisions awarding damages on a "nuisance" theory, but most noise suits are based on the "taking of property" theory.

There is considerable uncertainty about the extent of the Federal government's potential liability exposure. So far as we are aware, there is no good data on the amounts which homeowners have actually been able to obtain in lawsuits against airports. An important questions how the damages are measured. If, as some court decisions suggest, damages are limited to the loss in property value caused by aircraft noise, there are many homeowners impacted by noise who are unable to obtain damages because a loss of property value is not likely to occur unless there is a major change in airport operations.

3 - Federal Assistance for Airport Noise Abatement Programs

The Aviation Safety and Noise Abatement Act of 1979 establishes a program of federal assistance for airport noise abatement programs.

Before getting assistance the airport must complete a planning process (known as a Part 150 study) in which it receives public input and develops a comprehensive program for noise abatement including, as appropriate, operating restrictions, soundproofing, land acquisition and land use planning. The airport's program must be approved by FAA. The law directs FAA to consider the effectiveness of the program and whether it would constitute an

undue burden on interstate commerce. After a program has been approved, FAA may make grants from the Trust Fund for carrying out the program. Funding for these programs has been set at 10% of the Airport Improvement Program, $150-200 million a year.

The Part 150 process gives FAA some leverage over the measures taken by airports to reduce noise. However, leverage is limited because the Part 150 process is a voluntary program for those airports wishing Federal assistance. In addition, as the Part 150 program is administered, an airport with an approved Part 150 plan is free to impose, at a later date, restrictions which were not included in the approved plan.

4 - FAA's Traffic Control Procedures

FAA considers the environmental aspects of air traffic control procedures in two instances. First, if requested to do so, FAA will consider proposed changes in air traffic control procedures to lessen environmental effects. FAA will approve these changes if they do not detract from the safety or efficiency of the system.

Secondly, when FAA itself proposes changes in traffic control procedures, FAA may be required to conduct an environmental review under the National Environmental Policy Act.

As FAA applies NEPA, if a routing change involves airspace below 3,000 feet in altitude, the agency conducts an Environmental Assessment, which is an internal assessment of the environmental effects of the change, without the public process and public comment required in the development of an Environmental Impact Statement.

If the environmental assessment reveals that an Ldn of 63.5dB or more would be increased by 1.5dB or more, then an Environmental Impact Statement would be undertaken by the FAA.

Until recently, if a route change involved altitudes above 3,000 feet, the FAA did no environmental assessment unless the route change was expected to provoke controversy. On September 14, 1990, the FAA modified its policy to provide for environmental assessments for route changes above 3,000 feet if those routing changes add 5dB to any Ldn contours, even those outside the 65 Ldn contours. Also, for route changes between 3,000 feet and 18,000 feet environmental assessments will be conducted if the route change places aircraft over residential areas for the first time.

One notable situation provoking controversy was the failure of FAA to conduct an environmental assessment for air route changes over New Jersey during 1987. Beginning in early 1987, the FAA instituted route changes known as the Expanded East Coast Plan. These route changes were largely above 5,000 fee, and the FAA did

not anticipate the controversy these route changes would generate in Northern New Jersey. Accordingly, no environmental assessment was made. The General Accounting Office in a subsequent review of the East Coast Plan, recommended that an environmental assessment be undertaken.

Since the FAA has not undertaken such an assessment, the House incorporated a provision into H.R. 5170, the Aviation Safety and Capacity Expansion Act of 1990, directing the FAA to undertake an Environmental Impact Statement on the effects of the Expanded East Coast Plan. This legislation is pending in the Senate.

Outside of the formal process of making environmental assessments, the FAA will respond to requests from local governments and airport operators to make air route changes to alleviate noise problems. The FAA ordinarilly does not like to work directly with non-government citizen's organizations, absent the approval of local government or the airport operator. In considering air route changes, the FAA always places the highest priority on the safety impact of the changes. If FAA believes safety would be compromised by rerouting aircraft for environmental purposes it would not approve the changes.

5 - Legislative and Regulatory Proposals

The noise problem involves a series of related problems -- emission levels, airport restrictions, liability, local land use -- and a diverse group of interested parties with different objectives -- airports, airlines, local governments, the Federal government, and noise impacted citizens. Because of these complexities, many believe that the best solution to the noise problem would be a comprehensive compromise package which deals with all the issues involved, and gives some weight to of the concerns of all affected interests. This type of package is under consideration in the Department of Transportation and its Advisory Committees, but no recommendations have been approved.

A number of bills on aviation noise have been introduced in the House.

H.R. 546, introduced by Congresswoman Roukema, requires the Administrator to develop, not later than 30 days after date of enactment, with the cooperation of the State of New Jersey, a comprehensive plan for reducing noise from the operation of airports in New Jersey and in New York. Reports on implementation of the plan are required every 60 days. Not later than 60 days after enactment the Administrator shall enter into an agreement with the Secretary of Defense for increasing the use by air carriers of special use air space over the Atlantic Ocean. The Administrator is

required to issue an environmental impact statement for changes in air routes below the altitude of 19,000 feet. In any case in which the Administrator proposes comprehensive air route changes, the Administrator is required to hold at least 2 public hearings in areas affected by the change prior to implementation, and at least one hearing in each of the 2 years following implementation. The Secretary of Transportation is required to establish advisory committees to develop a national policy on reducing noise from the operation of airports. Not later than 6 months after the date of enactment, the Secretary of Transportation is directed to submit to the Congress legislative recommendations concerning the phase out of Stage 2 aircraft, including financial incentives.

H.R. 555, introduced by Congressman Stark, provides that Secretary of Transportation shall not make grants under the Airport Improvement Act to Oakland International Airport until the Port of Oakland enters into an agreement establishing a plan for use of only specified runways between 10 p.m. and 7 a.m.

H.R. 707, introduced by Congressman Rinaldo, provides that not later than 180n days after date of enactment the FAA shall issue an environmental impact statement on the effects of the FAA's expanded East Coast Plan. The bill further provides that not later than 180 days after the date of enactment FAA shall conduct an investigation to determine the effects on safety of the Expanded East Coast Plan.

After completing these two studies, the FAA shall report to the Congress on the results of the studies and shall make recommendations for modification of the Expanded East Coast Plan. These modifications shall be implemented not later than one year after date of enactment. The bill also requires FAA to issue an environmental impact statement on any significant air route or flight procedure change over an urbanized area at an altitude below 10,000 feet.

H.R. 1226, introduced by Congressman Torricelli, prohibits the operation of any subsonic aircraft unless such aircraft complies with Stage 2 or Stage 3 noise levels.

H.R. 1339, introduced by Congressman Courter, provides that the Expanded East Coast Plan shall not be effective after date of enactment unless the Administrator issues a detailed statement of the environmental impact of that plan under NEPA and revises the Plan to take account of environmental problems identified in that statement. The bill further requires that in any case in which the Administrator proposes to change an air route below an altitude of 19,000 feet the Administrator shall issue an environmental impact statement. The bill further requires the Administrator of the Environmental Protection Administration to comment on air route changes proposed by FAA on the basis of noise control criteria established by EPA. Air routes must be approved by the Administrator of the EPA under the Clean Air Act. The bill

further provides that the FAA shall not exclude operations in air commerce from NEPA requirements on the basis of the altitude of which these operations occur. Finally, the bill requires FAA to study its method of measuring noise, including methods for measuring noise at a distance greater than 10 miles from the airport.

H.R. 1496, introduced by Congressman Courter, is the same as H.R. 1339 except that it establishes a 30 day limit for EPA to comment on proposed route changes and deletes the requirement for EPA approval of air routes under the Clean Air Act.

H.R. 4818, introduced by Congressman Miller of Washington, requires FAA to develop, not later than 180 days after enactment, in consultation with the Port of Seattle, a comprehensive plan for reducing noise from the operation of airports in the State of Washington. The Administrator is also directed to submit implementation reports at least once every 90 days. Not later than 90 days after enactment the Administrator is directed to enter into an agreement with the Secretary of Defense to increase the use by air carriers of special use air space over the Pacific Ocean. The Administrator is required to issue an environmental impact statement for any air route change below the altitude of 15,000 feet. In any case in which the Administrator recommends comprehensive air route changes, the Administrator is required to hold at least 2 public hearings in the states or geographic areas affected in each of the 2

years following implementation of the changes. The Secretary of Transportation is required to establish advisory committees to develop a national policy on reducing noise resulting from the operation of airports. Not later than 6 months after date of enactment the Secretary of Transportation is directed to submit legislative recommendations on reducing the commercial fleet of Stage 2 aircraft. Such recommendations shall include financial incentives for expediting the retrofitting or retirement of Stage 2 aircraft.

6 - Measurement of Noise

Environmental noise is often expressed in 'decibels'. The decibel (dB) is a means of expressing the amplitude or loudness of sound using numbers that range between 20 and 120. A 10dB increase in sound (for example increasing from 50dB to 60dB) is perceived as twice as loud and a 10dB decrease is perceived as half as loud. Some examples of decibel values are: rustling leaves 20dB; window air conditioner 55dB; conversational speech 60dB; busy restaurant 65dB; ringing alarm clock 80dB; air hammer 107dB; jet airliner 500 feet overhead 115 dB. Prolonged exposure at 85dB results in hearing damage.

To assess the impact of aircraft noise on a community, it is important to have a measure that takes into account the frequency,

number and timing of numerous noise events. The 1979 Aviation Safety and Noise Abatement Act directed the FAA to designate a single measure of how noise impacted residents near airports. Prior to this, a variety of noise indicators were being used that captured or emphasized different elements of noise impacts (i.e. frequency of noise events; nighttime noise; number of noise events). Without a commonly used and accepted measure, policy debate on noise often could not determine the scope of the problem, much less take steps to solve the problem.

The measure that was selected by FAA is known as the "Day-Night Sound Level, Expressed in dB" or Ldn (sometimes DNL). Ldn represents the exposure over time to an average noise level expressed in decibels at particular geographic points. When calculating Ldn, all noise events are measured over a period of time, with nighttime events being assigned an additional 10dB over what is measured; nighttime noise is perceived to be louder since other background noise decreases at night. The sum of all noise events is then averaged so that the peaks and valleys between events and the intensity of events are all flattened and a particular geographic point is assigned an average decibel value. That value represents the constant decibel environment to which that point is exposed when all of the noise and all of the quiet times are averaged. These Ldn values can be placed on maps and geographic noise contours developed to illustrate relative exposures to

aircraft noise around an airport.

The federal government has determined that residential land use is incompatible with the noise experienced at the 65 Ldn contour. The FAA has policies and programs to reduce the number of residences within the 65 Ldn contours and to prevent new residences from being added.

While 65 Ldn noise is deemed incompatible with residences, lower levels of noise certainly produce annoyance among many residents living near major airports. FAA's 1985 study of Aviation Noise Effects cited surveys indicating that approximately 20% of residents are annoyed by aircraft noise at the 55Ldn contours (half the amount of noise as 65Ldn) and half of all residents are annoyed at the 60Ldn level.

FEDERAL AVIATION NOISE POLICY

SEPTEMBER 25, 1990

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 9:37 a.m., in Room 2167, The Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. OBERSTAR. The Subcommittee on Aviation will come to order.

Today we begin a long process of a comprehensive review of a complex web of interrelated subjects, all of which come under the general rubric of capacity.

This subcommittee has earlier in the year dealt with capacity in two of its main aspects: First, the capacity of the air traffic control system to modernize, to accommodate the growth in air traffic, to keep it safe, efficient and effective.

Second, reauthorization bill providing adequate funding for the physical capacity of airports by increasing spending out of the aviation trust fund. The new passenger facility charge will provide a supplemental funding mechanism to increase the physical capacity of airports.

But even with increased air traffic control capacity and modernization and greater physical capacity of airports to accommodate more traffic, if the public is not willing to accept greater air traffic, then the other two advances will be nullified.

The question of aviation noise is kind of a misleading label because it covers only one side, one aspect of this very complex web. We will learn in greater detail over the next few weeks about the many decisions that impact the issue of aviation noise.

There are decisions about capacity that affect passengers and shippers, that affect the economics of air travel and the competitive structure of the airline industry itself.

In our unique system of aviation, no single entity makes all policy decisions by and of itself, certainly not on aviation noise. The Federal Government does not build airports. It doesn't even tell airport authorities to build airports. It has an impact on how they make that decision, but that is essentially a local decision.

Aviation noise policy, instead of being the product of a single entity or a single decision-making authority, is the end product of a series of decisions made by the Federal Government, local governments, airport authorities, airport proprietors, airline companies and their customers, and communities and their residents.

Local government makes the decision to build or not to build, to expand or not to expand airports. Generally those decisions are made on the basis of considerations that have little to do with aviation itself.

Airports first were started in this country because communities saw an opportunity for economic growth and advancement to supplement and encourage the growth of the postal service, which was really the initiator of aviation in this country. Those individual decisions to take economic advantage of a charge of mail resulted in building airports. It had nothing to do with convenience, or the national aviation system.

It had nothing to do with a national aviation policy, but what was good for one or another community and certainly not with any consideration for what was the best service to the flying public, because in the early days of aviation, the airlines preferred mail to passengers, who happened, unfortunately, to get sick aboard, and mail didn't.

The Federal Government has the power to influence, even to veto local decisions about capacity through control of the aviation trust fund, spending both on capital and on the air traffic control and navigation system.

Those federal powers, though used sparingly, national concerns, I would say regrettably, have played only a limited role in local decisions to build or to expand airports. Then if you take it a step further, once an airport has opened or a new runway has opened, jurisdiction over noise issues becomes very different.

The airport proprietor has authority to restrict the use of the airport, to limit the impact of noise. But the Federal Government has authority to stop local operating restrictions on a number of grounds, including that this restriction may be an undue burden on interstate commerce.

Looking at other aspects of the noise problem, the airport authority and the various units of local government can take a number of measures to limit local noise impact: land use restrictions, sound proofing of buildings. The Federal Government has only limited power to influence those decisions primarily through the incentives, that are tied to funding, yet the Federal Government has executive authority over some very important elements of the noise problem to determine the permissible level of noise emissions from aircraft, for example.

The Federal Government also establishes an air traffic control system with control procedures for aircraft on approach and takeoff. These procedures determine the magnitude of noise, the spread of that noise and, in fact, whom that noise will impact.

In the last few years there has been a rather growing dissatisfaction over the results produced by this multifaceted noncentralized way of setting policy on aviation noise.

Noise emission standards are under attack because they will permit operation of stage 2 aircraft longer than the public in many places is willing to accept. Unless there are regulatory requirements that limit stage 2 operations, there will be only limited progress over the next decade in reducing the number of residences impacted by unacceptable noise level.

On the other hand, limitations on the operation of stage 2 aircraft may create substantial economic burdens for the air carriers, and that will translate into higher fares and further into competitive disadvantage with European carriers and the United States' presence in the European Economic Community.

It may also make it difficult for new entrants to get into the airline business. In the absence of any federal restrictions on stage 2 aircraft, airport proprietors are stepping into the breach and they are setting limits and posing restraints on operations of stage 2 aircraft. Those limits that add up to a patchwork quilt of regulatory actions do not add up to a national policy.

The local noise restrictions create competitive and economic problems for the carriers. They limit our ability to make maximum use of the air space. They have to be taken seriously because there are some 21 airports at which we have more than 50,000 hours of delays a year. That number is going to nearly double by the end of this decade.

It seems we are at a point where we need to evaluate all the elements. We need to hear from all the participants in this process. The traveling public, the communities, the airport operators, airport executives, the airline companies, those who represent people in local government, our colleagues at the federal level, the aircraft manufacturers. In short, in every aspect we are going to examine and gather together the information and set the stage for in the next Congress formulating a policy through a public dialogue process that will result in hopefully some resolution of this problem.

We waited on this committee for the Department of Transportation to act in the formulation of its national transportation policy study. When it came to the subject of airport noise, the report was silent probably for a number of good reasons. Probably because this Administration wasn't any more ready than the Congress is to act on the issue.

Congress cannot pass policy, of its own and on its own initiative. It needs the participation of the Administration. We are beginning this dialogue with the clear intention that the Administration will be a full participant and partner in formulating a decision as we come to this point unmistakably and necessarily in this next Congress. We can, we will and we must fill that void to deal with this matter and reach a national consensus on the issue.

With that, the Chair yields to the gentleman from Pennsylvania, Mr. Clinger.

[The prepared statement of Mr. Oberstar follows:]

OPENING STATEMENT HONORABLE JAMES L. OBERSTAR

Today, we begin a comprehensive review of the complex and interrelated group of problems which are commonly referred to as "aviation noise." This label can be misleading since it covers only one side of the coin. As we shall learn in greater detail over the next few weeks, many decisions on aviation noise are also decisions on the capacity that will be available to passengers and shippers, and on the economics and competitive structure of the airline industry.

In our aviation system, no single entity has the power to make all policy decisions on aviation noise. Instead, aviation noise policy is the end product of a series of decisions made by the Federal government, local governments, airport proprietors, and airlines and their customers.

It is local government which makes the decision to build or expand airports, a critical factor in aviation noise. Generally these decisions are made on the basis of

local concerns with the airport viewed as a generator of jobs and economic growth, and more recently as a generator of environmental concerns. These individual local decisions typically have nothing to do with the national picture and are not part of a national plan to integrate aviation for the best possible service to the public. The Federal government has some power to influence, or even veto, local decisions on capacity through the Federal government's control of Trust Fund funding for airport capital development and the Federal government's role in developing and operating the air control system. These Federal powers have been sparingly used and national concerns have played only a limited role in local decisions to build or expand airports.

Once an airport or a new runway has been opened, jurisdiction over noise issues is somewhat different. The airport proprietor has authority to restrict the use of the airport to limit noise impact. However, the Federal government has the power to stop local operating restrictions on a variety of grounds, including that a restriction is an undue burden on interstate commerce.

Looking at other parts of the noise problem, the airport authority and units of local governments have authority to take various measures to limit noise impact, such as land use restrictions and the soundproofing of buildings. The Federal government has only limited power to influence these decisions, primarily through the incentives tied to funding.

On the other hand, the Federal government has exclusive authority over some very important elements of the noise problem. The Federal government has authority to determine the permissible level of noise emissions for aircraft. The Federal government also establishes air traffic control procedures which determine the magnitude of noise and where the noise impact will fall.

In the last few years there has been growing dissatisfaction with the results produced by our multi-headed system of setting aviation noise policy.

On the Federal side, Federal emissions standards are under attack because they will permit the operation of Stage 2 aircraft indefinitely. Unless there are regulatory requirements limiting Stage 2 operations, there will be only limited progress over the next ten years in reducing the number of residences subject to unacceptable noise levels. On the other hand, limitations on the operation of Stage 2 aircraft may create added economic burdens on the airlines, which will translate into higher fares. Limits on Stage 2 operations may also make it difficult for weaker carriers and new entrants to continue to compete effectively.

In the absence of any Federal action on Stage 2 aircraft, airport proprietors are stepping into the breach and imposing a variety of limitations on the operations of State 2 aircraft. These restrictions, and related restrictions limiting runway use or operating procedures, raise national concerns. The local restrictions create economic and competitive problems for the airlines, and limit our ability to make maximum use of available airport capacity. Any limitation on capacity must be taken very seriously at a time when 21 airports have more than 50,000 hours of delay a year and the number is expected to jump to 39 midway through this decade.

It seems obvious to me that we are now at a point where we need to reevaluate all elements of the noise problem to see if we can do a better job of accommodating the concerns which noise policy must address—the protection of citizens against noise, and our national interest in developing the aviation infrastructure and an economically sound and competitive airline industry.

Although dissatisfaction with aviation noise policy has been increasing every year, there has been no comprehensive review of aviation noise policy since the late 1970's. It is generally believed that the Reagan and Bush Administrations have been unwilling to deal seriously with noise issues because they fear being labelled as anti-business or anti-local government. To me it is highly regrettable that these concerns have blocked even a comprehensive review of aviation noise policy, much less any changes or new policies. To be sure aviation noise is a difficult issue, and any study or new policy may run counter to the strongly held views of some of the parties concerned. But dealing with these types of issues is what leadership and government are all about. I hope that these hearings will encourage the Administration to take the first step of completing the reviews of noise policy which are now underway. If the Administration fails to do so, Congress can and will fill the void.

I am looking forward to hearing from the large and diverse group of witnesses who will be testifying during our four days of hearings. Their testimony will give us great insights into the many sides of the difficult issue of aviation noise.

Mr. OBERSTAR. I have received statements from our Colleagues, Mr. Costello, and Mr. Annunzio of Illinois, and Mr. Courter of New Jersey, that I will insert into the record at this point.

[The prepared statements of Messrs. Costello, Annunzio, and Mr. Courter follow:]

OPENING STATEMENT BY U.S. REP. JERRY COSTELLO, ILLINOIS

Mr. Chairman, I am pleased to be here today to investigate an issue which has a great bearing on how our nation undertakes the necessary expansion of our aviation system in the coming years. That issue is aviation noise.

Currently, aviation noise is regulated by a patchwork of local regulations which often simply have the effect of moving the problem from one community to another. In addition, this patchwork may be difficult for airlines to adapt to. Some sort of national policy is clearly necessary, and we must today consider how best to achieve some coordination throughout the nation's air traffic system.

The issue is of special relevance to my district. Currently, the expansion of Scott Air Force Base into a joint civilian-military use facility is being studied. One issue which will certainly emerge during the process is the effects of airport noise on the surrounding communities. It is my intention to ensure that those communities can continue to enjoy the same quality of life once the airport is in operation.

I am pleased to begin our in-depth inquiry into aviation noise policy, and I commend you, Mr. Chairman, for holding these hearings.

STATEMENT OF THE HONORABLE FRANK ANNUNZIO

Mr. Chairman and members of the Subcommittee, I would like to commend you for holding these important hearings as a beginning to a comprehensive review of Federal aviation noise policy. I also want to thank you for giving me this opportunity to appear before you to express my views on the subject, specifically as it refers to O'Hare International Airport in Chicago.

Noise pollution and its abatement are not new subjects. During my 26 years in Congress, I have dealt with the environmental problems at Chicago's O'Hare, the busiest airport in the nation and the major crossover terminal between the East and West coasts. The problems are caused by the fact that O'Hare contains only 7,000 acres which lie in the middle of a densely populated suburban area with flight patterns over an urban area. As a consequence, hundreds of thousands of citizens, as well as their homes, schools and churches, suffer from the noise and air pollution. I have received thousands of letters from citizens who live near or under the landing and departure patterns at O'Hare. Most tell the same story of noise so loud that people standing next to each other in their yards cannot hear what each other are saying, or stench from the planes' gas fumes permeating their homes and clothes and irritating the skin of their children.

The environmental problem has become so acute that in the November 6 election there will be referendums in 13 suburbs on whether Illinois should ban construction of new runways at O'Hare. The O'Hare issue will be on the ballot in Des Plaines, Elk Grove Village, Elmwood Park, Franklin Park, Harwood Heights, Niles, Northlake, Oak Park, Park Ridge, River Forest, River Grove, Roselle and Schiller Park.

Mr. Chairman, I think noise is going to emerge as the key public policy challenge for aviation in the next decade.

A little more than six years ago, the Congressional Office of Technology Assessment said noise became a major political and environmental issue in the early 1960s. The Federal Aviation Administration estimates that the land areas affected by aviation noise increased about sevenfold between 1960 and 1970. Residents living near airports and along flight paths complain that aircraft noise is annoying—especially at night—and depreciates the value of their property. Scientific evidence agrees that high exposure to noise can lead to high stress levels, nervous tension and inability to concentrate.

The Office of Technology Assessment said noise has been a major problem at airports since the widespread introduction of the commercial jet aircraft. It still is. And it probably will get worse before it gets better unless a comprehensive national policy is developed with the assistance of local residents.

While the FAA has been somewhat effective in implementing air route changes in order to mitigate capacity and efficiency problems, these changes are often made at the expense of the quality of life of those communities surrounding an airport. The time has come for aircraft noise to be addressed in a comprehensive way at the Federal level.

There currently is legislation before Congress which would eliminate Federal limits on the number of flights an hour at four of the major U.S. airports—Washington's National, New York's Kennedy International and LaGuardia and O'Hare.

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Sponsors of the bill say it will encourage airline competition by removing barriers that they say keep smaller carriers from serving airports and competing with larger airlines.

However, the U.S. Department of Transportation and I have opposed the legislation because we believe it would make O'Hare noisier and more congested by scheduling additional daytime airline flights there. Since 1969, the Federal Aviation Administration has limited the number of scheduled passenger jet flights at the four heavily-used airports to prevent excessive delays. The justification for the rule today is largely the same as it was in 1969: the capacity of these airports, measured primarily by calculation of engineered performance standards, will not support additional operations without an increase in airport noise, an unacceptable level of delays and an adverse impact of the flying public. More flights would have an extremely damaging impact on the residential areas around O'Hare, which now has a cap of 155 takeoffs and landings per hour. Anytime you add more flights, you are going to add more noise to the surrounding communities. The Transportation Department testified recently that the four airports can't support more rush-hour flights without an increase in noise and without unacceptable delays. Assistant Secretary Jeffrey N. Shane said the removal or easing of the high density rule would increase airport noise in three highly noise sensitive communities—the areas around National, Kennedy, LaGuardia and O'Hare. He said the high density rule effectively places an upper limit on aircraft noise at the affected airports by limiting the total number of aircraft operations.

There also is a lack of regulation when it comes to Federal noise standards. In its heyday a decade ago, the Office of Noise Abatement and Control at the U.S. Environmental Protection Agency had a staff of 130 persons and an annual budget of more than $10 million. Today, according to a recent newspaper report, Kenneth Feith is the whole office and he devotes only half of his time to the job, mostly answerings calls, responding to complaints and directing callers to State and local officials. The law that created the program, the Noise Control Act of 1972, is still on the books but there is no overall Federal program. The Reagan Administration argued that States and localities should assume responsibility without Federal assistance. But that hasn't happened.

The Federal government has an important role in insuring that the United States maintains a modern and safe national and international aviation system. But the government must also make sure that local residents are included in the formulation of any policy dealing with the nation's airports. Too often, solutions to the problems are made without any substantial input from the segment of the population that is most affected by the traffic at the busy airport—the local residents. It is about time this situation is changed.

Last Fall, U.S. Transportation Secretary Samuel K. Skinner created a Task Force to, in his words, "tackle the crucial task of modernizing and expanding our aviation system capacity." The Aviation System Capacity Task Force is a government-private sector group which consists of representatives of the major airlines, airport operators and executives, and the Federal Aviation Administration. I would like to point out that there was no formal participation by local citizens to help develop this national policy. Among the issues to be considered by the Task Force is the balancing of the prerogatives of local autonomy with the need for some degree of standardization regarding acceptable environmental quality and the airlines' tendency to overschedule prime time flight times, creating unnecessary congestion. The Task Force established a Noise Working Group to draw up a set of recommendations for the Task Force which would become part of any proposed Federal rules or regulations on noise abatement. It is my understanding that the Noise Working Group has submitted its recommendations to the Task Force which, in turn, is to make a report to the FAA Administrator.

I hope that report is made soon so that local residents can react. I do not want this to be another case where the Federal government will, with little or no notice, publish new regulations and tell local residents they must live with them.

There is no reason that the Federal government cannot exert a strong hand in seeking a solution to the cries of local residents for help from the noise emanating from local airport, such as O'Hare. It is time that we all work together to improve the quality of life for our local citizens.

Testimony of Congressman Jim Courter

Mr. Chairman, I want to commend you for your leadership in calling these hearings to explore and review our Federal aviation noise policy. Before I begin, I also wish to thank you for providing the people of New Jersey an opportunity to testify

here today. I believe their insight and first hand accounts will be invaluable to you as your deliberations proceed, and I wish to welcome them here today.

As you are well aware, since the inception of the expanded east coast plan, aircraft noise in New Jersey has become a pervasive problem which we in the New Jersey delegation have worked vigorously to address for over three years. So, we welcome these discussions by your committee, and we remain hopeful and optimistic that your efforts to identify viable solutions will bring relief to affected citizens in New Jersey and nationwide.

As you may know, Mr. Chairman, the expanded east coast plan is a comprehensive revision of air traffic control routes and flight procedures in the Eastern United States intended to reduce flight delays. It has been described by the Federal Aviation Administration as "the most extensive revision to air routes and flight procedures in twenty years." Briefly, the plan created new routes, realigned others, lowered flight altitudes and increased traffic over areas where only light traffic occurred previously.

Just to give you an idea of the breadth of the plan's impact, a General Accounting Office report commissioned by members of the NJ delegation documents an analysis done by the Federal Aviation Administration which showed that 144 flights passed over Long Valley, New Jersey in a corridor five miles wide and between 5,000 and 14,000 feet high in just one day. Moreover, a recent compilation of aircraft noise complaint data prepared by the FAA documents a total of 2,804 complaints received from 864 different individuals in a six month period beginning on January 1, 1990.

Needless to say, since its inception in February of 1987, thousands of New Jersey residents who were previously undisturbed by jet noise, many of whom live 30 to 40 miles from Newark airport, have become the victims of an air traffic routing system which has caused the dramatic deterioration of their quality of life.

I would like to commend to the attention of the committee, Mr. Chairman, the very thorough and telling report prepared by the GAO on the implementation of the FAA's expanded east coast plan. The report addresses a number of critical issues and makes several noteworthy recommendations. Among other things, it discusses the criticisms of the method employed by the FAA to measure noise, the FAA's decision not to conduct an environmental assessment resulting in the unfortunate exclusion of the public from the decision making process, and it cites several external factors which contributed to the decline in flight delays at the three New York/New Jersey metropolitan airports unattributable to the implementation of the EECP.

Throughout these very important hearings, you will undoubtedly receive the invaluable insight and recommendations necessary to assist your very noble efforts to craft a national aircraft noise policy for the future. However, I believe the situation in New Jersey deserves our immediate and special attention.

I strongly believe the residents of New Jersey fully deserve to have returned to them the peace and quiet which they rightfully enjoyed prior to February of 1987. The EECP has created a nuisance which must be eliminated. The rights of thousands of property owners have been infringed upon as the value of the homes they purchased 30 and 40 miles away from the airport are threatened by devaluation.

Our efforts to work with the FAA to alter the plan in hopes of somewhat alleviating the noise pollution problem have been nothing more than a fruitless struggle. Time and again the FAA has promised to do something. Unfortunately, their efforts have been wholly inadequate.

Mr. Chairman, as your committee deliberates a national aviation noise policy, I wish to request, as my colleagues and I have done in the past, that you visit our State and hear for yourself the intolerable noise which has been created by the EECP. I would suggest, Mr. Chairman, that you would then reach the same conclusion which I have drawn—that is the expanded east coast plan must be scrapped. I believe we must eliminate the noise created by the expanded east coast plan. Measures which seek to simply reduce the noise only address the symptoms, they do not address the problem. This can only be done by eliminating the plan.

The House recently voted for an amendment offered by my colleague from New Jersey, Congressman Rinaldo, to require the FAA to study whether the major rerouting of commercial air traffic patterns had an adverse environmental impact in New Jersey. I believe this common sense approach should serve as the starting point in crafting a plan to accommodate increased air traffic. Only then can we ensure that the residents of New Jersey can enjoy a return to the quality of life which they so valued prior to the inception of the disastrous expanded east coast plan.

Mr. CLINGER. Thank you, Mr. Chairman.

I want to commend you for calling these hearings. If the number of witnesses who have requested permission to be heard before the committee is any indication of the importance that it should attach to this issue, it certainly is going to be one of our more contentious and exhaustive series of hearings.

The rapid growth in our aviation industry spawned by deregulation brought with it a number of benefits and challenges. On the positive side, air service is much more competitive and has generated a huge new demand. Tens of thousands of new jobs have been created; frequencies are more responsive for travelers; a system of discounts for personal and vacation travel has evolved; and generally, an air traveler is able to reach their destination with no more than one intermediate stop.

But a price has been paid for all the major advantages of better and cheaper service, and that has been noise. Prior to deregulation, families living in the vicinity of airports were subjected to infrequent, but noisier, aircraft overflights. Today, I suspect, the drone is fairly constant. If not banks of flights during daylight operations, it is the twilight drone of overnight package delivery services.

One of the chief reasons we are able to enjoy convenient flight frequencies and low airfares has been the carrier's ability to efficiently deploy their fleets. With the advent of noise restrictions, however, carriers will not be able to use their planes in the most cost-effective manner. If too many localities impose curfews or other limitations, air travelers may find themselves paying higher prices for tickets, or overnighting at a distant city because they are unable to catch a late flight home. Indeed, our national airway system will begin to disintegrate in the face of local restrictions and future traffic growth and job growth will be curtailed as carriers face an increasing array of obstacles.

From my perspective, we need to achieve a reasonable balance between airports, affected residents, and the air carriers. Aircraft manufacturers and carriers have spent enormous sums designing and buying quieter aircraft. Left unchecked, if localities continue to impose operating restrictions, the efficiencies of these new aircraft will be for naught, because they can't fly at night, they can't fly as frequently, and consequently are left sitting on the tarmac for too many hours without earning revenue.

So, Mr. Chairman, I look forward to these hearings we are going to have. I particularly want to express our appreciation for the distinguished panel from the great State of New Jersey, whom we are happy to welcome before us.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

The Chair recognizes the gentleman from New Jersey, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman.

I am looking at this distinguished panel from New Jersey. It is really nice to see all of you here this morning.

Mr. Chairman, I would first like to take this opportunity to thank you for agreeing to hold hearings on the subject of aircraft noise. This is an issue that is quite important to many residents of the Monmouth County portion of my district and on their behalf, I would also like to thank you.

At first glance, to those unfamiliar with the problem this may seem like a nonissue. From time to time we all notice aircraft flying overhead. However, when there is the constant roar of jet engines thundering over your home, you take a different perspective.

I first learned of this problem after my election and during my first term when a number of people from the Monmouth Organization Against Aircraft Noise (MOAN), whom we have a representative here today, Juliete Cozzi, contacted my office.

Monmouth County residents face airline traffic from Kennedy Airport. These arrival/departure routes cut across the Sandy Hook region of the county and depending on the volume of traffic that given day these routes often must shift west affecting a greater portion of the county's residents.

Sandy Hook is located in the northeast corner of the county and is bordered on the east by the Atlantic Ocean. Based upon the information that I have obtained, it is also conceivable that airline traffic could be both descending and climbing over Monmouth County at the same time. In other words, departing flights will be climbing to one altitude while arriving flights in the same flight path are descending of their final approach. The planes' normal noise factor is intensified significantly by this combination of activities.

My first approach to this problem was to contact the Federal Aviation Administration. In conjunction with a local citizens group, the Monmouth Organization Against Aircraft Noise, I made several inquiries with the FAA relative to finding a solution to the problem.

Although the exchange of information was beneficial, I was unable to obtain an administrative means of relief for the problems my constituents face. In conjunction with the Air Transport Association, and the Aviation Development Council, I also hosted a public meeting at which residents were able to question representatives from the FAA and other agencies such as the Port Authority of New York and New Jersey.

Of course, the New Jersey members, and I see all of them here today, have had several meetings with the FAA and with me as a delegation. To be honest, I have to say that the problem specifically over Monmouth County is nowhere near a solution.

The problem of aircraft noise affects many portions of the State of New Jersey. With three major airports, John F. Kennedy, La Guardia, and Newark all within such a relatively chose proximity of each other, it is not hard to imagine that northern and central New Jersey is a focal point for aircraft noise. New Jersey is the most densely populated state in the Union, and being aware of that fact we must recognize and avert the changes to this system that merely shifts the burden from one part of the state to another.

I want to stress that because every time we have had a meeting we have heard of different possible routes. They obviously affect other parts of the state. We don't want a solution that will hurt one of us at the expense of the other.

One relatively simple solution may exist for the problem as it relates to Monmouth County. Rerouting flights over the Atlantic

Ocean would require that the Department of Defense relinquish portions of airspace reserved for military use to the FAA.

One of the measures I have cosponsored, H.R. 546, requires that the FAA begin negotiations with the Department of Defense to accomplish just that. More importantly, this bill requires that a comprehensive plan to reduce aircraft noise be formulated for the airports in New York and New Jersey. According to this bill, an environmental impact statement must be issued when there is a substantial route change proposed in the New Jersey and New York area.

This bill further requires the development of a national policy relative to aircraft noise. It is this type of comprehensive approach that is needed to adequately address this problem. And only through such a comprehensive manner can we return peace and quiet to the afflicted communities of New Jersey and the United States.

I want to, of course, commend Congresswoman Roukema for sponsoring that. I really do believe that would go far towards solving our problem.

Thank you very much, Mr. Chairman.

[Mr. Pallone's prepared statement follows:]

STATEMENT OF REPRESENTATIVE FRANK PALLONE, JR.

Mister Chairman, I would first like to take this opportunity to thank you for agreeing to hold hearings on the subject of aircraft noise. This is an issue that is quite important to many residents of the Monmouth County portion of my district and on their behalf, I would also like to thank you.

Maddening, infuriating, nerve wracking; these are some of the terms my constituents use when they contact me expressing their anger and frustration at the level of aircraft noise they must endure in their communities. Whether it's ruining a family barbeque or making it difficult to sleep at night, Monmouth County residents say that aircraft noise is changing their lives, and not for the better.

At first glance, to those unfamiliar with the problem this may seem like a non-issue. From time to time we all notice aircraft flying overhead. However, when there is the constant roar of jet engines thundering over your home, you take a different perspective. I first learned of this problem within the first several months of my first term as a member of the House of Representatives.

To be more, specific, Monmouth County residents face airline traffic from Kennedy Airport. These arrival/departure routes cut across the Sandy Hook region of the county and depending on the volume of traffic that given day these routes often must shift west affecting a greater portion of the county's residents. Sandy Hook is located in the northeast corner of the County and is bordered on the east by the Atlantic Ocean. Based upon the information that I have obtained it is also conceivable that airline traffic could be both descending and climbing over Monmouth County at the same time. In other words departing flights will be climbing to one altitude while arriving flights in the same flight path are descending for their final approach. The planes normal noise factor is intensified significantly by this combination of activities.

My first approach to this problem was to contact the Federal Aviation Administration. In conjunction with a local citizens group, the Monmouth Organization Against Aircraft Noise I made several inquires with the FAA relative to finding a solution to the problem. Although the exchange of information was beneficial, I was unable to obtain an administrative means of relief for the problems my constituents face. In conjunction with the Air Transport Association, and the Aviation Development Council I also hosted a public meeting at which residents were able to question representatives from the FAA and other agencies such as the Port Authority of New York and New Jersey.

The problem of aircraft noise affects many portions of the state of New Jersey. With three major airports, John F. Kennedy, La Guardia, and Newark all within such a relatively close proximity of each other it is not hard to imagine that northern and central New Jersey is a focal point for aircraft noise. New Jersey is the

most densely populated state in the Union and being aware of that fact we must recognize and avert the changes to this system that merely shifts the burden from one part of the state to another.

One relatively simple solution may exist for the problem as it relates to Monmouth County. Rerouting flights over the Atlantic Ocean would require that the Department of Defense relinquish portions of airspace reserved for military use to the FAA. One of the measures I have co-sponsored, HR 546 requires that the FAA begin negotiations with the Department of Defense to accomplish just that. More importantly, this bill requires that a comprehensive plan to reduce aircraft noise be formulated for the airports in New York and New Jersey. According to this bill, an environmental impact statement must be issued when there is a substantial route change proposed in the New Jersey and New York area.

This bill further requires the development of a national policy relative to aircraft noise. It is this type of comprehensive approach that is needed to adequately adress this problem. And only through such a comprehensive manner can we return peace and quiet to the afflicted communities of New Jersey and the United States.

Mr. OBERSTAR. Thank you.

The Chair recognizes the senior Republican on the Public Works Committee, the gentleman from Arkansas, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

Look at this panel of distinguished witnesses out here in front of us and seeing all this New Jersey power, I am going to put my statement in the record. I wouldn't want to encroach on their time.

[The information follows:]

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT

Mr. Chairman, a great deal of progress has been made in reducing aircraft noisy in recent years. The noisy stage 1 aircraft have been phased out. Manufacturers have stopped making additional stage 2 aircraft and the number of people subjected to unacceptable noise levels has decreased from 7 million to 3 million since the early seventies.

However, the more progress we make in reducing aircraft noise, the less tolerance people seem to have for the noise that remains. In many areas, people are opposing new airports and new runways, demanding the phase-out of stage 2 aircraft, and seeking changes in the routes flown by airlines.

These noise demands have enormous implications for our National Air Transportation System. Our reauthorization bill, which recently passed the House, contains substantially more money for airport improvements. But what good is all this money if airport construction is blocked by noise problems?

Airlines will also be significantly impacted by this problem. They will be expected to spend substantial sums of money to hush-kit their aircraft or buy replacements. At a time of rising fuel costs and sagging passenger traffic, this is bound to put a substantial strain on some of our financially weaker carriers.

Mr. Chairman, in my area of the country, the problem is not so much aircraft noise but the lack of airline service. A little more aircraft activity in some areas would actually be welcome.

However, I recognize that in other areas of the country people have legitimate concerns about aircraft noise. These concerns must be addressed. In all likelihood, this will involve a phase-out of stage 2 aircraft together with some assurances concerning the operation of stage 3 aircraft. But precisely when that phase-out should occur and exactly what form those assurances should take are difficult questions. The purpose of this hearing is to address these questions and to get the public's views on them.

I congratulate you, Mr. Chairman, for having the foresight to call this hearing and address these difficult issues. I would like to join you in welcoming our colleagues and the other witnesses from all over the country whom we will hear from during the four days of hearings.

Mr. OBERSTAR. It looks to me like the New York Yankees of the Babe Ruth era in front of us, heavy hitters at bat.

I want to welcome the New Jersey congressional delegation, of which I include our colleagues on the committee, Mr. Pallone and Mr. Roe and those on the Republican side, for their insistence and

persistence on the issue of aircraft noise as it impacts their constituents.

They have been pursuing me for quite some time to hold this hearing preferably in New Jersey. That didn't work out with our schedule. Today's hearing hopefully serves the purpose, because they are the lead of witnesses and the lead of concerns in a four-day series of hearings and in a year-long, I hope, assessment of aircraft noise as it impacts national aviation policy, as I said in my opening remarks.

I know all of the Members have commitments and time constraints and committee mark-up sessions to get to, and our two Senators have expressed their respective urgencies. We will go on a seniority basis.

The gentleman, the senior Senator, Mr. Bradley.

TESTIMONY OF THE HON. BILL BRADLEY, A SENATOR FROM NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman, for your willingness to hold these hearings.

I think the issue of aircraft noise is enormously important. I hope through these hearings we will be able to develop some remedy for the problem that we are facing in New Jersey.

For too long homes across this country have been bombarded by excessive noise from nearby overcrowded airports which accommodate old, noisy aircraft. Air transportation is increasing and airports are expanding to meet this need. Yet, the expansion is taking place without full consideration to the surrounding communities that are faced with increases in noise.

Because there is no policy which regulates noise, airports are imposing local noise restrictions in a piecemeal way. It is about time that the Department of Transportation comes up with a national noise policy. I hope these hearings are a catalyst for a comprehensive national noise policy.

I think by holding them, the subcommittee recognizes that the problem of aircraft noise exists. I am hopeful that the Department of Transportation will find the hearings helpful in dealing with this problem in an effective way.

I have a strong interest in seeing that the problems of aircraft noise are addressed, specifically because of my state.

In 1987, the FAA announced the Expanded East Coast Plan, so-called EECP. This plan was supposed to improve safety and reduce delays at New York and New Jersey airports. Unfortunately, not only has the plan failed in its intended mission, but it has caused hardship to thousands of New Jersey residents.

Homes that never before had a plane fly over them now hear the engines literally hundreds of times a day. As a citizen, I can tell you one afternoon sitting in my own home reading a book, I decided I would mark down how many times I was interrupted by noise levels that diverted my attention from the reading. In one hour I marked down 13 times that the airplane roaring overhead was enough to divert my attention from the book.

Mr. Chairman, as I have said repeatedly, pollution is pollution. We can't tolerate noise pollution any more than we can tolerate

pollution of the water we drink, or the air we breathe. That is the essence of our case.

Because of the problems created by aircraft noise in New Jersey, Senator Lautenberg and I have introduced a five-point plan to help alleviate the noise. We had hoped the FAA would work with us and find a solution to the problem. But after numerous meetings which have failed to produce any result, we realized that we needed legislative remedies.

We called for a national noise policy. This policy would be developed in coordination with the EPA and the Council of Environmental Quality and the Department of Health and Human Services, an enormously important action. It would be developed through a series of public hearings which would be held throughout the United States. This provision was included in the Department of Transportation appropriations bill.

Senator Lautenberg and I also successfully passed an amendment to the DOD bill that calls for greater use of military air space, a point Mr. Pallone was making. We propose the phasing out of stage 2 aircraft by the end of the decade. We called on the New Jersey Port Authority to begin that process much earlier.

We have also urged the Senate Subcommittee on Aviation to incorporate the House language requesting an environmental impact statement on the EECP in the FAA reauthorization bill.

Mr. Chairman, this committee will hear from a number of different groups through the course of these noise hearings. Many participants will be experts in the field. But I would like to remind you and other members that the real experts on the issue of noise are the citizens who you are going to be hearing from shortly on this panel.

I happen to be both a Senator and a citizen when it comes to this noise question. They are the people who live with the constant threat of their home being invaded by aircraft noise. They are the ones who formed a coalition and who are working together to try to solve this problem. But, they can't do it alone.

Frankly, I have been impressed with the groups in New Jersey who are concerned about this and who have organized. Frankly, I think they are absolutely experts on the FAA and how it runs or fails to run effectively the air system.

I appreciate the committee granting them a chance to not only bring their views, but their expertise before you today. I urge you to listen to their stories because their stories are our stories. I would say that for everyone at this table.

[The prepared statement of Mr. Bradley follows:]

STATEMENT BY SENATOR BILL BRADLEY

Mr. Chairman: Thank you for the opportunity to appear before your Subcommittee. I would like to commend you on the leadership you have shown by holding these hearings. Aircraft noise is a serious issue that needs to be addressed.

For too long now, homes across the country have been bombarded with excessive noise from nearby overcrowded airports which accommodate old, noisy aircraft. Air transportation is increasing and airports are expanding to meet this need. Yet, expansion is taking place without full consideration given to the surrounding communities that are faced with the increase in noise. Because there is no policy which regulates noise, airports are imposing local noise restrictions in a piecemeal way. It is about time that the Department of Transportation comes up with a National Noise Policy.

I hope these hearings are a catalyst for a comprehensive National Noise Policy. By holding these hearings, the Subcommittee recognizes that the problem of aircraft noise exits. I am hopeful that the Department of Transportation will use our findings to deal with this problem in an effective way.

I have a strong interest in seeing that the problems of aircraft noise are addressed. In 1987, the FAA announced the Expanded East Coast Plan (EECP). This plan was supposed to improve safety and reduce delays at the New York/New Jersey Airports. Unfortunately, not only has the plan failed its intended mission, but it has caused hardship to thousands of New Jersey residents. Homes that never before had a plane flying overhead now hear the engines of literally hundreds of planes per day. Mr. Chairman, as I have repeatedly said, pollution is pollution, and we cannot tolerate noise pollution any more than we can tolerate pollution of the water we drink or the air we breathe.

Because of the problems created by aircraft noise in New Jersey, Senator Lautenberg and I have introduced a 5 point plan to help alleviate the noise. We had hoped that the FAA would work with us and find a solution to the problem, but after numerous meetings which have failed to produce any real results, we realized the need for legislative remedies.

We have called for a National Noise Policy. This policy would be developed in coordination with the Environmental Protection Agency, the Council on Environmental Quality, and the Department of Health and Human Services. It would be developed through a series of public hearings which would be held throughout the United States. This provision was included in the Department of Transportation Appropriations Bill.

Senator Lautenberg and I also successfully passed an amendment to the DOD bill that calls for a greater use of military airspace. We proposed the phasing out of Stage II aircraft by the end of the decade. We have also called on the Port Authority of New York and New Jersey, which is the local operator of the airports, to begin this phase-out earlier and to work with the affected communities.

We have also urged the Senate Subcommittee on Aviation to incorporate the House language requesting an environmental impact statement on the EECP in the FAA reauthorization bill.

This process has been a long and difficult struggle. But I am hopeful that the help of this Subcommittee and the urgency of the problem will enable us to find solutions.

This Committee will hear from a number of different groups through the course of the noise hearings. Many of the participants will be experts in their fields. But I would like to remind the Members that the real experts on the issue are the citizens whom you will be hearing from shortly. They are the people who live with the constant threat of their home being invaded by aircraft noise. They are the ones who have formed a coalition and who are working together to try and solve this problem. But, they cannot do it alone. I have been impressed with the groups from my State of New Jersey, who now know more about the FAA and how they run the air system than they ever imagined or cared to find out. I appreciate the Committee granting them a chance to tell their story.

Mr. OBERSTAR. Thank you very much, Senator.

As members of this subcommittee know, this is a very good listening committee. We spend long hours listening. We have invited those, as you put it, the real experts, those who are impacted by that noise so as to hear how and in what way aviation noise affects them.

Thank you.

Senator LAUTENBERG. Merci. The Chairman and I have a language exchange program.

Mr. OBERSTAR. Senator, we are very, very glad to have you. You have come here many times to testify at hearings of this committee on issues of significance in aviation. You have really shown a deep dedication and a willingness to walk that extra mile, make that extra effort. Together with the very thoughtful consideration of your colleague, Senator Bradley, I know we can accomplish something useful and effective and lasting.

Senator LAUTENBERG. Thank you very much.

TESTIMONY OF HON. FRANK LAUTENBERG, A SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

You and I and the distinguished representative from Arkansas, Mr. Hammerschmidt, have shared some very significant moments together on behalf of safety in the skies.

We have established a particular bond that we hope will bear fruit in the near future in terms of fighting terrorism in the air.

Mr. Chairman, in the interest of giving my colleagues some time to make their statements, I would ask that my full statement be included in the record as if read.

Mr. OBERSTAR. Without objection, so ordered.

Mr. LAUTENBERG. And I will just make a couple of summary comments.

First of all, I was pleased to note that last night Senator Ford introduced the AIP Reauthorization Bill. It includes a requirement for DOT to conduct an environmental impact statement to review the aircraft noise situation in New Jersey.

Mr. Chairman, very briefly, you know that there is nothing more harassing or more difficult than to have your peace and tranquillity constantly disturbed, whether it is by aircraft noise or highway noise.

We see barriers built with highways constantly now. That is part of the environmental impact review that goes into highway construction.

We are a compact, little state, the most densely populated in the Union.

There isn't any place really exempt from aircraft noise, especially in the northern part of the state. And you see here this panel of New Jersey Representatives who believe, as do the citizens in their respective districts, that this is a problem that deserves the kind of attention that you see by virtue of this hearing.

Mr. Chairman, I would simply urge that you take the initiative that you have so often shown and examine this issue thoroughly.

Mr. Chairman, take the initiative as you have over the years on aviation matters and consider this is among the highest priority things you have to deal with.

Help us relieve our citizens in the State of New Jersey and the region.

This isn't a unique New Jersey problem. It affects our people probably more than our neighboring state New York, but we all have the same thing. It is time the government got on to insisting that we move into Stage 3 aircraft.

With our kids in Saudi Arabia what could be more timely than to say let's get the engines that use 30 percent less fuel and also reduce the noise by about half.

Mr. Chairman, I leave it to the good judgment of you and your colleagues on the panel to try to move into a legislative mode on this issue.

I thank you very much for the opportunity to appear before you today.

[The prepared statement of Mr. Lautenberg follows:]

STATEMENT BY SENATOR LAUTENBERG

Mr. Chairman, thank you for the opportunity to again appear before your subcommittee.

The subject of aircraft noise is an important one. It has to be addressed. Hopefully, these hearings can serve as a springboard for action, so that residents of my state, and in communities all over this country, can get relief from the burden of aircraft noise.

The FAA's Expanded East Coast Plan brought this problem to many of my constituents. Some of them are here today. They're here because their lives have been impacted by noise pollution. Just like people who have seen toxic wastes seep into their water supplies or poison their air, these people aren't going to just sit back and let this pollution go unchecked. Nor can we.

It's unfortunate and unacceptable that the public forums for them to express their views and concerns about aircraft noise have come after the Plan was enacted—that opportunity absolutely should have come before it went into effect.

Mr. Chairman, noise is pollution. In other areas, we acknowledge that. We build sound barriers along busy highways. OSHA sets standards to protect workers from excessive and damaging noise. But when it come to aircraft noise, the FAA takes a "hear no evil" attitude.

Increases in aircraft noise should be considered like other forms of pollution or disruption of the environment.

There should be environmental reviews, and environmental impact statements, with adequate public participation. In the case of the Expanded East Coast Plan, there was no such process.

Many of the problems we've encountered might have been avoided, had the FAA let the public know what they were up to.

The House has passed legislation requiring the FAA to go back and do what it should have done three years ago, and prepare an environmental impact statement for the Expanded East Coast Plan. Senator Bradley and I are working in the Senate to try to see this provision become law.

At the same time, we are working on a number of other fronts. In July, Senator Bradley and I proposed a five-point plan to address the aircraft noise problem. Some of the initiatives have already been acted on. Others are underway. That plan calls for:

First, the expanded use of restricted military airspace, to route traffic away from populated areas.

Second, the adoption of an aggressive noise control policy, including a near-term phase-out of stage 2 aircraft, at the airports under the control of the Port Authority of New York and New Jersey.

Third, the development of a national aviation noise policy, through a series of public hearings, and with strong consideration given to environmental concerns.

Fourth, requirements for the FAA to prepare environmental impact statements for major route changes that would result in significant increases in existing noise levels.

Fifth, a mandatory national ban on Stage 2 operations by the end of the decade. This week, we'll be introducing a bill to implement this proposal.

I believe it could be the single most effective step we can take to provide relief, well into the future, from aircraft noise. I hope that this subcommittee will consider a similar proposal.

Following through on the five steps I've outlined could result in real and lasting relief to those affected by aircraft noise.

Mr. Chairman, this is a difficult issue, and I commend you for holding these hearings. As always, I look forward to working with you and your subcommittee on this and other important issues.

Mr. OBERSTAR. Senator, I assure you that once this committee makes a determination to move ahead on an issue, we move on it and we complete our work.

We will move toward and we will develop a noise policy, one that will be enacted into law and one that will be effective.

We thank you for your contribution, Senator.

We thank you Senator Bradley, for your very thoughtful and wise words.

Both of you are excused.

I know you have commitments, you must leave.

We do have a vote in progress.

Mr. Dwyer, I think you have a full committee mark up and you might not be able to return.

TESTIMONY OF HON. BERNARD J. DWYER, A REPRESENTATIVE FROM NEW JERSEY

Mr. DWYER. Thank you, Mr. Chairman. That is very true. We have many conflicting meetings going on. One is with the Appropriations Committee, the mark up of the Continuing Resolution for Fiscal Year 1991. Perhaps I should skip this because I think that will be a contentious meeting.

I would like to congratulate the committee for having this hearing and perhaps just make one point.

The percentage of stage 2 aircraft that are operating out of Newark Airport, which is really the center of most of our complaints, is probably among the highest in the country.

It is certainly a lot higher than many other cities throughout the country. Yet the plan installed in January by the Port Authority at Newark Airport actually applies to only 1.2 percent of the flights out of Newark.

I think a good deal more can be done in that order.

Thank you.

I will submit my statement for the record.

[The prepared statement of Mr. Dwyer follows:]

TESTIMONY OF HON. BERNARD J. DWYER, A REPRESENTATIVE FROM NEW JERSEY

Good morning. I appreciate the opportunity to join my colleagues from New Jersey today to address an issue of growing concern to residents of the 6th District and the surrounding areas. I would also like to thank you, Chairman Oberstar, for agreeing to hold these important hearings and for accepting the amendment during floor consideration of HR 5170, which requires the FAA to issue an Environmental Impact Statement and to conduct an air safety investigation on the Expanded East Coast Plan. As we all know, and as the General Accounting Office's August 1988 Report has confirmed, this Environmental Impact Statement could have, and in my opinion should have, been issued before implementation of the Expaned East Coast Plan.

Since February, 1987 when the FAA implemented Phase I of the Expanded East Coast Plan, residents of New Jersey have been inundated with aircraft noise. FAA efforts to adjust the Plan in response to complaints from Members of Congress and from residents has only succeeded in spreading the noise to new communities, such as Colonia and Edison, New Jersey. That is why the New Jersey Coalition Against Aircraft Noise and the Monmouth Organization Against Aircraft Noise, who you will hear from later this afternoon, are among the fastest growing environmental coalitions in New Jersey.

The residents of Colonia and Edison, as well as those in Rahway, Carteret and Linden, have suffered from this excessive noise, day after day, month after month, and year after year—while new studies are made and insignificant changes implemented. All the while, the noise continues to increase, and the quality of life for our constituents continues to deteriorate. Ironically, the number of delays are up significantly at Newark, La Guardia and JFK—well above the national average. In short, the Plan has been a colossal failure. And the General Accounting Office agrees with this assessment.

As a delegation, we have met with Secretary Skinner, FAA Administrator James Busey, FAA Regional Administrator Daniel Peterson and others in an attempt to address this problem in a rationale manner. While a number of options have been considered and several minor revisions implemented, the noise continues—causing daily and nightly disruption for thousands. Indeed, the Hush 1 "trial" has been a failure and SID 3 (Standard Instrument Departures) as a modification to Hush 1 has not worked. FAA promises to look seriously at the use of military routes in the At-

lantic have not produced results and in February, Admiral Busey told our delegation that ocean routing is not practical, citing unsubstantiated cost figures.

I have also met with officials from the Port of Authority of New York and New Jersey, which owns and operates Newark Airport—yet the Port Authority believes that maximizing revenue from their airport operations is more important than the public health of the citizens of New Jersey.

Although the Port Authority implemented a much publicized ban on Stage 2 aircraft on January 1, 1990, the ban has been grossly inadequate and ineffective in reducing the noise generated from antiquated aircraft flying into and out of our State. In fact, the Port Authority's January 1st rule only bans *new* Stage 2 aircraft between midnight and 6 a.m. (Existing Stage 2 will be grandfathered for two years, after which no Stage 2 will be allowed during those hours). In actuality, this ban only applies to 1.2% of the flights out of Newark.

While many other airports around the country, including Los Angeles (61%), San Francisco (61%), Seattle (49%), and Boston Logan (44), receives a much higher percentage of the quieter Stage 3 Aircraft, Newark receives only 36%. This coupled with the fact that growth at Newark Airport has been among the highest in the country, has exacerbated an already serious problem. In fact, because New Jersey is the most densely populated state in the nation, the number of people living under the constant thunder and danger of crisscrossing jets, is higher than anywhere else in the country.

Mr. Chairman, over the next week, this Subcommittee will hear from several different communities and States throughout the country—with similar problems and concerns. Aircraft noise is a nationwide problem and an urgent environmental concern that the FAA must address. We must have an effective comprehensive Federal Aviation Air Noise Policy in place—and we look to this Committee to provide the leadership necessary which has been lacking from the FAA. You will certainly have our support if you do so.

Although HR 5170 may be temporarily stalled in the Senate, the FAA and the Port Authority should realize that it is the intention of all of us here today to pass legislation that will assess the environmental impact of the Expanded East Coast Plan and to craft a comprehensive solution to aircraft noise over New Jersey. The FAA can either work with us or against us. So far, I think most of my colleagues would agree that they have worked against us. It is my hope that the FAA finally begins to cooperate by recognizing aircraft noise concerns to be at a priority level equal to capacity and efficiency—next only to safety. I urge the FAA to participate in the local aircraft noise reduction process in a constructive and meaningful manner, and call on them to implement a comprehensive national plan for phasing out Stage 2 aircraft.

Again, Mr. Chairman, my thanks for your responsiveness and for the help and support of your Committee.

Mr. OBERSTAR. Without objection, your statement will be included in the record.

I would prefer to recess at this point and come back in 10 minutes.

[Brief recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting, and as the Chair announced earlier, all Members are under some restraint or another, and the only fair way to hear all the members is to begin as we did earlier, seniority basis, and that brings us to Mr. Rinaldo, one of the leaders of the New Jersey Delegation, in petitioning for this hearing, and as an activist on behalf of Federal action in response to the concerns of the people in New Jersey and along the East Coast, to the problem of aircraft noise.

The gentleman also is an author of an amendment accepted during Floor consideration of our airport capacity and safety bill that has passed the House by an overwhelming vote. We really appreciate the support with respect to the environmental impact statement on the East Coast Plan.

The gentleman has been a persistent advocate for his constituents, and we appreciate that.

Mr. Rinaldo?

TESTIMONY OF HON. MATTHEW J. RINALDO, A REPRESENTATIVE FROM NEW JERSEY

Mr. RINALDO. First of all, Mr. Chairman, let me thank you and all the members of the subcommittee for holding these hearings on an issue of tremendous importance to thousands of people in New Jersey.

Secondly, I want to state publicly that the amendment I offered never would have passed without the unswerving cooperation that was offered by you as chairman of the committee, and the ranking member from Pennsylvania, Mr. Clinger. I am very grateful, and I am sure all the Members of the New Jersey Delegation and citizens from New Jersey here appreciate the support you gave us on that amendment.

At this point, Mr. Chairman, I would like to yield, for a unanimous consent request, to my colleague from New Jersey, Mr. Gallo, who has to get to an Appropriations meeting.

Mr. OBERSTAR. The gentleman from New Jersey.

TESTIMONY OF HON. DEAN A. GALLO, A REPRESENTATIVE FROM NEW JERSEY

Mr. GALLO. I would like to thank my colleague for allowing me to go out of order. We are in the middle of a mark-up in Appropriations. I do have a statement I would like to submit for the record, and at the same time, I think it is pretty clear where I have been on their particular issue, and I know will be articulated by the New Jersey Delegation, which is in a unified position in doing something about the air noise.

So, again, I thank you for yielding, and thank you, Mr. Chairman.

[The prepared statement of Mr. Gallo follows:]

TESTIMONY OF HON. DEAN A. GALLO, A REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, I welcome this opportunity to speak before the subcommittee regarding this important issue and appreciate your taking time to schedule these hearings with the number of pressing issues still confronting the subcommittee. As you know, several pieces of legislation addressing the air noise problem have been introduced and are awaiting action in your subcommittee.

Air noise is an enduring, annoying problem that affects many areas and communities across the country. It must be solved if the nation's airports are to have the community support they will need to expand and meet the increased demand projected for the next decade and beyond.

For thousands of people who have to keep their windows closed all summer because the noise is so oppressive, this is not just a minor annoyance—it's a recurring nightmare.

I can speak from experience. My office has received hundreds of calls and letters from my New Jersey constituents complaining about the incessant rumble.

Their lives have been changed dramatically as a result of the decision made in 1988 to send air traffic from all three major metropolitan airports directly over their homes at altitudes low enough that the wing markings are clearly readable from the ground.

That 1988 FAA decision, known as the Expanded East Coast Plan, was designed and implemented without the benefit of an environmental impact statement. In April 1988, I, along with five other Members of the New Jersey delegation asked the

General Accounting Office to review the plan and the decision-making process that was used to develop the Plan.

The GAO concluded that an environmental impact statement should have been performed prior to implementation of the Expanded East Coast Plan. The report confirmed the wide-spread belief that noise pollution caused by airplanes is threatening the health of many New Jersey residents.

And although there has been some movement at the federal level to address this problem, it is not enough. I have joined with my colleagues from new Jersey in introducing legislation to establish a national policy on aircraft noise reduction and roll back the EECP.

This legislation H.R. 546 requires the FAA and the Defense Department to work together so that civilian aircraft may use military airspace off the coast of New Jersey. For over a year and a half, I have called for ocean routing of aircraft and have met with DOD and other federal officials to stress the importance of their continued cooperation. In addition, the legislation would change present FAA rules to require an environmental impact statement for air route changes such as those implemented under the Expanded East Coast Plan.

Instead of shifting the problem around, we must pursue policies that move more flights over the ocean and that encourage the use of newer, quieter aircraft by carriers.

I have met with FAA Administrator James Busey to discuss how Newark International Airport flights might be routed to reduce aircraft noise. Mr. Busey has agreed to rethink the possibility of routing more planes over the ocean and has committed to further discussions with the New Jersey Congressional delegation. I believe the FAA should move forward with proposals to reroute some of the air traffic over ocean routes. I first called for ocean routing of air traffic in 1988.

Also, it is important for the FAA to develop more stringent noise abatement rules at airports and for the airline industry to upgrade older planes and bring on line newer, quieter planes to reduce the sound output of the engines. New regulations to prohibit further introduction of Stage 2 aircraft operations during nighttime hours is a good first step, but it is not enough. A total phase-out of State 2 aircraft must be implemented.

Mr. Chairman, I again want to emphasize the fact that this is not a problem confined to traffic from any single airport. It is a regional problem that involves flights from La Guardia and Kennedy Airports in New York, from Newark International Airport, and from traffic patterns used by flights as far away as Logan Airport in Boston. I also know for a fact that many states on the west coast are suffering from their own air noise problem that promises to get worse as the congestion grows. The FAA must be strongly encouraged to end its current piecemeal approach and address the aircraft noise problem in a comprehensive and effective manner.

Mr. Chairman, I look forward to working together with you to help solve this most pressing problem.

Mr. OBERSTAR. Thank you very much. Without objection, the gentleman's statement will be included in the record at the appropriate point.

Mr. RINALDO. Mr. Chairman, this is my 18th year in Congress. Let me state that I have never attended a hearing during those 18 years in which there were this many members of our delegation expressing such a sincere interest in the matter before the committee.

I have never attended a hearing where there was so much interest among the citizens of the State, where some people have taken time from their jobs to come to Washington to petition your subcommittee for relief from this oppressive noise.

A noise pollution nightmare has been plaguing my home State ever since the Federal Aviation Administration implemented its Expanded East Coast Plan in early 1987. The plan created new flight paths that were intended to disburse traffic safely and more efficiently.

There is no convincing evidence whatsoever that either objective has been accomplished. These major flight path changes have

caused a barrage of deafening jet noise over communities which never before experienced aircraft noise.

The residents of my district, particularly the eastern part of the district, are particularly hard hit by these changes. Many of my constituents are awakened in the middle of the night by incredibly loud, low-flying aircraft.

Although the FAA itself describes the Expanded East Coast Plan as the most extensive revision in domestic air traffic in 20 years, it did not issue an environmental impact statement on the flight path changes.

In fact, the FAA failed to conduct any environmental review of the plan at all. The FAA claimed it could exempt itself from conducting an environmental review because the flight path changes were carried out 3,000 or more feet above ground level.

A General Accounting Office report concluded that the FAA should have done much more to anticipate the public outcry caused by the plan, and recommended the issuance of an environmental impact statement.

Since 1987, the entire New Jersey Delegation, Republicans and Democrats alike, other State and local elected officials, and concerned citizens' organizations have been pressing the FAA and the Department of Transportation to take steps administratively to rectify the air noise problem caused by the Expanded East Coast Plan.

Nothing meaningful has been done to date, despite meeting after meeting, and promise after promise. Needless to say, this kind of official indifference to such an urgent problem has been frustrating to all concerned, and most of all to the Members of this Delegation.

Let me say that I was very pleased that you and the ranking minority member of this subcommittee showed your recognition and understanding of the problem when you gave your full support to my aircraft noise amendment which passed the House last July.

As you stated, the amendment requires the FAA to go back to the drawing board and issue an environmental impact statement on the effects of the Expanded East Coast Plan. Under that amendment, the FAA's environmental impact statement must be reviewed and approved by the Environmental Protection Agency and submitted to Congress within six months of enactment.

My amendment further calls for an air safety investigation within six months of enactment to determine the effect of changes in aircraft flight patterns on air safety over the State of New Jersey. When that amendment is enacted into law, hopefully, it will finally force the FAA to make modifications in air routes over our area.

However, I want to add that while I absolutely support this amendment, I intend to and will support any practical, workable legislative response that would solve this problem.

The important thing is that this delegation is united. The important thing is that this delegation demands a solution to this problem.

The important thing is that this Delegation is frustrated with inaction by the FAA, and thank God that you are pressing forward with your committee in an effort to find the kind of solution that the citizens of New Jersey demand, need and deserve.

In the meantime, I still believe that some air traffic can be rerouted over the Atlantic Ocean. Furthermore, the FAA should reroute LaGuardia and Kennedy jet traffic over the Hudson River Valley.

It is simply unfair to send most of the air traffic from the three major airports in our region over densely populated areas of northern and central New Jersey and New York, and I know there are some of my New York colleagues here who should not be spared from this problem at the expense of the New Jersey residents. It is a problem we all have to endure and they have to bear their fair share.

According to recent reports I received from my constituents, they are monitoring nighttime flights. They are reporting to us; they know the system; they know what is going on, and they are knowledgeable, intelligent people trying to find a workable solution to a very vexing problem.

According to them—the FAA is still not complying with its promise to reroute late-night flights. These terribly annoying flights must stop now. That is something we shouldn't have to wait for.

Finally, we need a tough national policy on aircraft noise in this country. Despite the magnitude of our aircraft noise pollution problem, our Department of Transportation has avoided this difficult issue. It can't be swept, and it shouldn't be swept under the rug, and it is my hope that the testimony today will shed enough light on the problem, will show the magnitude of the problem, and will convince Congress and your subcommittee to act as swiftly as possible to address this growing environmental problem.

Again, Mr. Chairman, I want to certainly thank you for the opportunity to testify before you and your subcommittee. I want to thank you for your cooperation, and I am sure that all of the citizens of our State who are plagued by this problem recognize the attention that is being paid to it by you and your subcommittee.

Thank you very much.

[The prepared statement of Mr. Rinaldo follows:]

TESTIMONY OF CONGRESSMAN MATTHEW J. RINALDO OF NEW JERSEY

Mr. Chairman. First let me thank you and all of the members of the subcommittee for holding these hearings on an issue of tremendous importance to thousands of people in New Jersey: Aircraft noise.

A noise pollution nightmare has been plaguing my home State ever since the Federal Aviation Administration (FAA) implemented its expanded east coast plan in early 1987. The plan created new flight paths that were intended to disperse aircraft safely and more efficiently. There is no convincing evidence that either objective has been accomplished.

These major flight path changes have caused a barrage of deafening jet noise over communities which never before experienced aircraft noise. The residents of my district are particularly hard hit by these changes. Many of my constituents are awakened in the middle of the night by incredibly loud, low flying aircraft.

Although the FAA itself described the expanded east coast plan as the most extensive revision in domestic air traffic in 20 years, it did not issue an environmental impact statement on the flight path changes. In fact, the FAA failed to conduct any environmental review of the plan at all. The FAA claimed that it could exempt itself from conducting an environmental review because the flight path changes were carried out 3,000 or more feet above ground level. A General Accounting Office report concluded that the FAA should have done much more to anticipate the public outcry caused by the plan, and recommended the issuance of an environmental impact statement.

Since 1987, the entire New Jersey delegation, other State and local elected officials, and concerned citizens organizations have been pressing the FAA and the Department of transportation to take steps administratively to rectify the air noise problem caused by the expanded east coast plan. Nothing meaningful has been done by the FAA to date. Needless to say, this kind of official indifference to such an urgent problem has been frustrating to all concerned.

Let me say that I was very pleased that the distinquished chairman and ranking minority member of this subcommittee showed their recognition and understanding of the problem when they gave their full support to my aircraft noise amendment which passed the House last July. The amendment requires the FAA to go back to the drawing board and issue an environmental impact statement on the effects of the expanded east coast plan.

Under my amendment, the FAA's environmental impact statement must be reviewed and aproved by the Environmental Protection Agency (EPA) and submitted to Congress within six months of enactment. My amendment further calls for an air safety investigation within six months of enactment to determine the effect of changes in aircraft flight patterns of air safety over the state of New Jersey. When my amendment is enacted into law, it will finally force the FAA to make modifications in air routes over our area.

In the meantime, I still believe that some air traffic can be re-routed over the Atlantic Ocean. Furthermore, the FAA should re-route La Guardia and Kennedy jet traffic over the Hudson River valley. It is simply unfair to send most of the air traffic from the three major airports in our region over densely populated areas of northern and central New Jersey. New York should not be spared from this problem at the expense of New Jersey residents.

According to recent reports I have received from my constituents, the FAA is still not complying with its promise to re-route late night and early morning flights over sparsely populated areas. These terribly annoying flights must stop now.

We need a tough national policy on aircraft noise in this country. Despite the magnitude of our aircraft noise pollution problem, our Department of Transportation has avoided this difficult issue. It is my hope that the testimony today will shed enough light on the problem so that Congress can act swiftly to address this growing environmental problem.

Again, Mr. Chairman, thank you for the opportunity to testify before you and your subcommittee.

Mr. OBERSTAR. Thank you, Mr. Rinaldo. We appreciate your thoughtful comments and your observations about rerouting the aircraft, particularly your very, very useful suggestions.

We will now recognize the gentlewoman from New Jersey.

Ms. MOLINARI. If I may make a comment to Congressman Rinaldo's testimony?

Mr. OBERSTAR. I think all members will remain here. We would like to take all their statements and proceed with the statements. I am sure the gentlewoman from New York has some observations.

Mr. RINALDO. If I may, Mr. Chairman, I wasn't referring to rerouting any traffic over Staten Island. Quite frankly, I have to leave now for a meeting of the Energy and Commerce Committee, but I stand by my statement. I feel traffic from LaGuardia and Kennedy, when it takes off according to the flight patterns, heads directly over New Jersey, and we are not going to tolerate that injustice any more.

Mr. OBERSTAR. I will recognize the gentlewoman.

Ms. MOLINARI. I will be brief, because unfortunately, more times than not, Staten Island shares a lot of the environmental ills by New Jersey, be it our air pollution, water pollution or noise pollution, we have much more in common than sometimes we feel we do with the rest of the city.

I would like to bring to some of my colleagues' attention the fact that in an attempt to ameliorate some of the problems that were experienced by New Jersey residents by the Port Authorities' own

admission in their 1989 document, they stated they were going to begin this January, which they did, rerouting some flight traffic directly over Staten Island.

Now, we are, in fact, experiencing the same problems you are. It is a burden equally being shared and will be worked on by all of us, including the New York State Delegation, especially this Member, to make sure the whole vicinity shares this problem, and hopefully in this end, this committee will find a solution that will let all of our communities sleep at night.

Thank you, Mr. Chairman.

Mr. RINALDO. If the gentlewoman would yield; we would love to have you working with the New Jersey Delegation, because you are closer to the City of Elizabeth, which is in my District, and we would appreciate having you working with us to find a solution.

Ms. MOLINARI. I appreciate the opportunity.

Mr. OBERSTAR. The gentleman has another commitment.

The gentlewoman from New Jersey, Mrs. Roukema. We thank you for your insight, for your patient persistence on this matter, and hope you will continue to walk with us through this very long process.

TESTIMONY OF HON. MARGE ROUKEMA, A REPRESENTATIVE FROM NEW JERSEY

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I can assure you that I will continue to walk with you through this thorny path. I know it is something of a tar baby, but one that is our obligation to address directly, and I do thank you, Mr. Chairman and certainly the ranking minority member, for your understanding and your patience, and the fact you have taken the initiative in setting up this hearing.

We had hoped, as the chairman said, to have this hearing in New Jersey, but as you can see, Mr. Chairman, if Mohammed won't come to the mountain, the mountain will come to Mohammed.

You have not only the New Jersey Delegation here, but a good many number of citizens representing the grass-roots level, as well as State legislators, to indicate the depth of our concern.

Mr. Chairman, as you well know, and members of the committee, we on the New Jersey Delegation have worked patiently and long with everyone involved, from Regional Administrators in the FAA right up to the Secretary of Transportation, but our efforts have been fruitless over the last two years.

And so, therefore, we come to you, the committee. At the risk of charging you with an onerous burden, it is in my opinion your responsibility now, Mr. Chairman, to help craft a national policy that will restore oversight, rein in the free-wheeling FAA and restore the quality of life to the citizens of northern New Jersey who have suffered the effects of the East Coast Plan.

And, finally, to ensure that these practices do not happen again to yet more unsuspecting citizens, citizens who perhaps now live in the Midwest or on the West Coast, because as you know, there are similar plans contemplated in the Midwest and the West Coast.

As a consequence of our experiences with the regulatory processes, legislation which I have introduced I feel will compel the agency to act. In fact, I feel it is the most unfortunate aspect of this entire episode, that the issue of aircraft noise should ever have to come to legislation. It is not my purpose, nor is it the purpose of anyone in the New Jersey Delegation here this morning to put the East Coast Plan under a microscope.

No, we are rightly present here to address the larger issue of a national policy for aircraft noise. In this context however, I believe it would be constructive to briefly revisit some of the actions and inactions of the FAA, and their track record on this subject.

Frankly, to my mind, it has been grossly deficient, and too often there has been evidence of a sweeping disregard for the quality of life in the neighborhoods and communities impacted by the change.

Consider that the East Coast Plan was established and installed for three reasons—which I suspect this committee knows as well as I. These were to reduce delays, to increase airport capacity, and to increase safety.

Yet, across the board, the data now show that none of these have been accomplished, and this has not been the case. Figures culled from the Port Authority's own bond statements, which I will submit for the record here today, reveal that since the imposition of the East Coast Plan, the overall plane movements and passenger handling of the Big Three New York metro airports have steadily decreased in number.

The huge increase in passenger traffic that the FAA cites as a compelling argument has in fact been a decrease of over the 4.5 billion fliers during the previous period.

At the same time, flight delays have increased—by almost 20 percent on the average, and at Kennedy, by almost 50 percent.

For delayed takeoffs, the only airport with a record worse than New York's La Guardia Airport was San Francisco International, and they had an earthquake, I might remind you.

At this point, Mr. Chairman, I want to note for the record, and I want to stress this very forcefully, there has been some intimation here that all we are involved with and concerned about here is Newark Airport. That is not the case.

For example, in my District, we incur a triple whammy. We are as affected by La Guardia and JFK traffic as we are by Newark Airport. And that, I must suggest to you, is over the most densely populated area of the most densely populated State in the Nation, so I think it gives you some understanding of the problems involved here.

The Expanded East Coast Plan was called by the FAA administration, the most sweeping restructuring of air routes in aviation history. That it was, and New Jersey was dubiously blessed. In any case, air traffic previously routed over Staten Island, was now rerouted over New Jersey. Flight paths were significantly lowered with corresponding noise levels obviously increased, leading the General Accounting Office to find in its in-depth report that the FAA should have had some idea as to the effects of the massive changes it was imposing.

Mr. Chairman, I would like to submit the GAO documentation to the committee for your consideration and for the record.

[The information appears on p. 30.]

Mrs. ROUKEMA. In the assessment of the EECP, the New Jersey Department of Environmental Protection disagrees with the FAA, and notes that several alternatives could help alleviate the impacts of the plan.

I think this is quite significant, Mr. Chairman—the New Jersey Department of Environmental Protection notes that the relocation of navigational aids, the assignment of only stage III aircraft to the most noise-sensitive areas, and the acceleration of the phase-out of stage II planes are all options which we feel are worth exploring.

I also am unconvinced that the possibility of routing aircraft over industrial rather than residential areas has been significantly addressed. Although the FAA says otherwise, I have found no convincing evidence from them that such cannot be done.

A final note on the East Coast Plan, and the lack of evidence concerning effects on safety—and I stress safety. Again, we are talking about the most densely populated section of the most densely populated State in the Nation. The effects on safety are woefully unclear, to some extent understandably so, because no one can say whether or not plane crashes were prevented.

We do know the acceleration of the volume of aircraft over densely populated areas is in and of itself a safety factor, and one that I think the FAA is dismissing too lightly.

As I indicated, Mr. Chairman, the need for congressional action is real and clear, and I would hope that in your efforts to craft national air noise policy, you consider the legislation I have offered and put before the House.

I do thank my colleague, Mr. Pallone from New Jersey, who has already alluded to essential elements of my bill. They are, as you know, the requirement that goes beyond what the very useful work that Mr. Rinaldo has done this year, but goes beyond and enacts legislation, a requirement for environmental impact studies both on this situation as well as future situations.

It also points out that we want to have an acceleration of retirement of the stage II aircraft. In that regard, I think it should be noted—and perhaps this committee understands that across the Atlantic, the European Community has adopted a ban on the further registration of additional stage II aircraft.

I and others have grave concerns that in the absence of congressional action, the United States may become a dumping ground for the noisy European aircraft that is being retired under their program. I think that argues in favor of a stepped-up program, whether it be tax credits or some other mandate for phasing out the stage II aircrafts. I think that is essential.

The final most important provision in my bill—of course, we do include the use of defense air space, and I think that has already been noted. In addition, finally, a provision in my bill has a requirement that any comprehensive air route must be open to public hearings in the States and the communities impacted by the proposed changes. These hearings must come both before and after the implementation of such changes.

One of the most disturbing aspects of the aircraft noise problem over the three years has been the treatment of the people who

have suffered directly at the hands of an unresponsive bureaucracy.

As I have long maintained, no agency, congressional, Federal, State or other, can be allowed to arbitrarily impose such sweeping and deleterious changes to the quality of life without so much as a look-see from the impacted citizens.

The need for disclosure and discussion with residents, local officials and community leaders is absolutely vital to the crafting of any good policy. That notion may sound obvious in this ERA—in this area of right-to-know and sunshine laws, but I have seen that in the case of aircraft noise, it has been always ignored.

I would make the observation, of course, that we have citizens here again, and one State Legislator, Assemblywoman Maureen Ogden, all who are demonstrating that people at the grass roots are angry, they are fed up and they are not going to take no for an answer.

Finally, Mr. Chairman, I think the last hope of solving this problem lies in swift and sure Congressional action. I trust that as the subcommittee considers the testimony put before it over this next week, members grow to understand fully the need for a national aircraft noise policy. This is not a regional problem, it is one that is growing across the country, and that the delivery of relief to all those in my State who have suffered randomly and needlessly at the hands of insensitive, if not arrogant, Federal technocrats needs to be redressed.

Thank you, Mr. Chairman.

[The prepared statement of Mrs. Roukema follows:]

STATEMENT OF HON. MARGE ROUKEMA

As I begin my remarks this morning, I would like to thank the Chairman and Ranking Minority Member of the Subcommittee for convening this panel to investigate the problem of aircraft noise. This is an issue that has only grown steadily worse since 1987, yet my efforts in dealing with officials on every level—from Regional Administrators to the Administrator of the Federal Aviation Administration (FAA) and the Secretary of Transportation himself—have been fruitless. At the risk of charging your Subcommittee with an onerous burden, Mr. Chairman, it is now up to you to craft a national policy that will restore oversight, rein in the free-wheeling Federal Aviation Administration, restore the quality of life to the citizens of Northern New Jersey who have suffered the effects of the Expanded East Coast Plan (EECP), and, finally, ensure that such practices do not happen again to yet more unsuspecting citizens. As you know, Mr. Chairman, this is not solely a regional problem. Midwest and West Coast plans are under consideration, making aircraft noise policy national in scope.

As a consequence of these experiences with the regulatory processes, legislation which I have introduced will compel the agency to act. In fact, what I feel is the most unfortunate aspect of this entire episode is that the issue of aircraft noise should never have had to come to legislation. It is not our purpose here this morning to put the Expanded East Coast Plan under this microscope: no, we are rightly present to address the larger issue of a national policy for aircraft noise. In this context, I believe to be constructive to briefly revisit the FAA's track record on this issue. Frankly, to my mind, it's grossly deficient, and too often evidence of a sweeping disregard for the quality of life in the neighborhoods and communities impacted by its changes. Levels of bureaucratic insulation have served to obscure one simple truth: as elected and appointed officials, we are charged to craft and administer laws that serve the people, not unaffected desk jockeys.

Consider that the EECP was established and installed for three reasons: to reduce delay, to increase airport capacity, and to increase safety. Yet across the board, the data show that this has not been the case.

Figures culled from the Port Authority's own bond statements, which I shall insert for the record, reveal that since the imposition of the EECP, the overall plane

movements and passenger handling of the "big three" New York-metro airports have steadily decreased in number. The huge increase in passenger traffic that the FAA cites as a compelling argument for the EECP has, in fact, been a decrease of over four-and-a-half million flyers. At the same time, flight delay has increased by almost 20% on the average, and at Kennedy, almost 50%. For delayed take-off's, the only airport with a record worse than New York's La Guardia was San Francisco International—and they had an earthquake! What's our excuse?

The Expanded East Coast Plan was called by the Federal Aviation Administration "the most sweeping restructuring of air routes in aviation history." New Jersey alone was "blessed" with three new departure routes, two new arrival routes, and six "realigned" routes. Air traffic that was previously routed over Staten Island was now rerouted over New Jersey. Flight paths were significantly lowered, with corresponding noise levels obviously increased, leading the General Accounting Office to find in its in-depth report that the FAA should have had some idea as to the effects of the massive changes it was imposing. Yet the FAA maintains that it did not expect any "significant" impact, and didn't feel any Environmental Statement or study of alternatives was warranted. And they still don't!

In its assessment of the EECP, the New Jersey Department of Environmental Protection disagrees, and notes several alternatives that could help alleviate the impacts of the Plan. The relocation of navigational aids, the assignment of only Stage III aircraft to the most noise-sensitive area, and the acceleration of the noisiest, Stage II planes are all options which NJDEP notes are worth exploring. I am also unconvinced that the possibility of routing aircraft over industrial, rather than residential, areas has been sufficiently addressed. Yet the only response of the FAA to thousands of complaints at all levels has been the most marginal 'fine-tuning' of the EECP. Strikes me as rather like rearranging the deck chairs on the *Titanic*.

A final note on the EFCP: the evidence concerning effects on safety is woefully unclear, and to some extent understandably so. No one can say whether the EECP prevented ten planes crashes this year. And if I could see that correlation, I might take the adverse effects of the EECP a bit more graciously. But I can't see that, and frankly, no one can show it to me. What I can see and understand easily, however, is the extreme, super-maximum capacity at which the EECP runs airports such as Kennedy and La Guardia, and the inherent safety risk of so much traffic in so little space. The fanning out of aircraft, with expanded and extended routes, only further increases the potential for cataclysmic accident, over the most densely-populated area of the most densely-populated state in the union! The series of airline disasters on Long Island earlier this year is still too fresh in my memory for me to be assured of the 'safety benefits' that compel the Expanded East Coast Plan.

I do not stand up here to arbitrarily cry for a "roll-back" of the EECP, but based on the available data, not one of the reasons given for the imposition of this plan holds true.

As I indicated, Mr. Chairman, the need for Congressional action is real and clear. I would hope that in your efforts to craft national air noise policy you consider the legislation I have authored and put before the House. My bill has several components, some of which aim to end the problem northern New Jersey now suffers, and others, of highest interest to every Member in the House, that call on the Secretary of Transportation to devise and report to Congress recommendations for a national policy on reducing noise resulting from the operation of airports.

Specific components of my legislation include:

The requirement of Environmental Impact Studies for any proposed change of air routes at or below 19,000 feet. In crafting the Expanded East Coast Plan, Federal Aviation Officials were able to exclude performing such a study, as any proposed changes occurred at over 3,000 feet. That standard is pathetically inadequate, 15 years old, and as the FAA freely admits, without solid rationale or reason. Yet that is the standard on which the EECP was assessed.

Administrators will tell you that the EECP is the only solution: that is plainly untrue. As the General Accounting Office indicated, FAA Officials themselves have acknowledged that a thorough Environmental Impact Statement and an examination of all alternatives and their impacts would benefit the FAA and the public. Why haven't these alternatives been explored? That the regulations permit such questionable action as the EECP with only the most marginal research is indicative of the problem we face without a standard, national, aircraft noise policy. Citizens across my state have seen and suffered the effects of the "discretionary powers" of investigation that the FAA is allowed. The provision in my bill which demands a full and substantive impact study on comprehensive air-route changes is a carved-in-stone must!

H.R. 546 requires the secretary of Transportation to submit to Congress legislative recommendations on how we can phase out the noisiest Stage II aircraft. Across the Atlantic, the European Community has adopted a ban on the further registration of additional Stage II aircraft. I have grave concern that absent Congressional action, the United States is poised to become a "dumping ground" for the noisy European aircraft. The recommendations required by my legislation would include a date for the complete phase-out of Stage II's, as well as suggestions for the financial incentives needed to speed the fitting of such planes with quieting equipment. Maybe tax credit is necessary to fairly ensure that businesses and industry move as quickly as possible to reduce the noise of their aircraft; what is certain is that we can no longer afford to do nothing.

The final, most important, provision in my bill establishes a requirement that any comprehensive air route changes must be open to public hearings in the States and communities impacted by the proposed changes. These hearings must come both before and after the implementation of such changes. One of the most disturbing aspects of the aircraft noise problem over three years has been the treatment of the people who have suffered directly at the hands of an unresponsive bureacracy. As I have long maintained, no agency—Congressional, Federal, State or other—can be allowed to arbitrarily impose such sweeping and deleterious change to the quality of life without so much as a look-see from the impacted citizens. The need for disclosure and discussion with residents, local officials and community leaders is absolutely vital to the crafting of any good policy. That notion may sound obvious in this era of "right to know" and "sunshine laws", but I have seen that in the case of aircraft noise, it has too often been ignored.

I would like to stress one additional point to the Members of the Subcommittee, and any who will hear or study my remarks. In a letter to my Colleagues in the House, I gave them this warning: if you have not yet been contacted by constitutents concerned with the rapidly growing problem of aircraft noise, wait a year or two—you will. It is ominous that the Expanded East Coast Plan is still considered to be the model for Western and Mid-Continent aircraft routing patterns. Residents of my State and the surrounding areas have already had to spend three years dealing with the consequences of an improperly-advised and recklessly-installed plan. I would hope we would not let history repeat itself.

As I close, I remind the Subcommittee that later today they will have the opportunity to hear testimony from a panel of New Jersey witnesses, including lawyers, business leaders, and the New Jersey State Legislator leading the fight against aircraft noise, Assemblywoman Maureen Ogden. Over the past three years I have had the opportunity to meet and work closely with these people, and I am certain that their testimony and presentation will yield further insight to the distinguished Members of the Subcommittee. With their appearance, I would like to make one last observation: the issue of aircraft noise in northern New Jersey has resulted in unprecedented grass-roots activism at all levels. People are fed up and will not accept 'no' for an answer.

Ladies and Gentleman, I propose that it is we who have to wake up. Executive, bureaucratic and administrative solutions have been tried and failed. The last hope of solving this problem lies in swift and sure Congressional action. I trust that as the Subcommittee considers the testimony put before it over the next week, Members grow to understand fully the need for a national aircraft noise policy, and the delivery of relief to all of those in my state who have suffered randomly and needlessly at the hands of insensitive, if not arrogant, federal technocrats.

Thank you.

* MRS. ROUKEMA'S SUBMISSION TO BE INCLUDED WITH HER TESTIMONY IN THE RECORD

PRELIMINARY OFFICIAL STATEMENT DATED [illegible], 1990

NEW ISSUE—FULL BOOK ENTRY

Moody's:
Standard & Poor's:
Fitch's:

Interest on the Bonds is not includible in gross income for Federal income tax purposes, would not be treated as a preference item in calculating the Federal alternative minimum tax and is not subject to certain taxes imposed directly thereon by the States of New York and New Jersey or by any political subdivision thereof, to the extent and as set forth in the opinion of General Counsel of the Port Authority. See the sections of this Official Statement entitled "Legal Opinion of General Counsel of the Port Authority", "Certain Federal Tax Matters" and "Tax Exemption".

$100,000,000*

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Consolidated Bonds, Sixty-ninth Series

Dated as of June 26, 1990

The Sixty-ninth Series Bonds are direct and general obligations of the Port Authority pledging the full faith and credit of the Port Authority for the payment of principal thereof and interest thereon. The Sixty-ninth Series Bonds are secured equally and ratably with all other Consolidated Bonds (which includes Consolidated Notes) heretofore or hereafter issued by a pledge of (a) the net revenues of all existing facilities of the Port Authority (not including cars acquired under the New York State Commuter Railroad Car Program) and any additional facilities which may hereafter be financed or refinanced in whole or in part through the medium of Consolidated Bonds, (b) the General Reserve Fund of the Port Authority equally with other obligations of the Port Authority secured by that Fund, and (c) the Consolidated Bond Reserve Fund established in connection with Consolidated Bonds. The Port Authority has no power to levy taxes or assessments. The Port Authority's bonds and other obligations are not obligations of the States of New York and New Jersey or of either of them, and (except for New York State Guaranteed Commuter Car Bonds) are not guaranteed by said States or by either of them.

The Sixty-ninth Series Bonds shall be delivered upon original issuance as one fully registered bond for each maturity of each installment in the amount of such maturity, registered in the name of the sole registered holder of the Sixty-ninth Series Bonds, Cede & Co., as nominee for The Depository Trust Company, New York, N.Y. At the time of such delivery the Sixty-ninth Series Bonds are to be deposited with The Depository Trust Company, New York, N.Y. (DTC), an automated depository for securities and clearinghouse for securities transactions, which will be responsible for establishing and maintaining a book-entry system for recording the ownership interests of its participants, which include certain banks, trust companies and securities dealers, and the transfers of interests among its participants. The DTC participants will be responsible for establishing and maintaining records with respect to the beneficial ownership interests of individual purchasers in the Sixty-ninth Series Bonds. Individual purchases of beneficial ownership interests in the Sixty-ninth Series Bonds may only be made through book entries (without certificates issued by the Port Authority) made on the books and records of DTC and its participants in denominations of $5,000 or integral multiples of $5,000 of principal or maturity amounts, as applicable. During the period in which Cede & Co., as nominee for DTC, is the sole registered holder of the Sixty-ninth Series Bonds, the payment of interest will be made to Cede & Co., as nominee for DTC; disbursal of such amounts to DTC participants is the responsibility of DTC, and disbursal of such amounts to the individual purchasers of beneficial ownership interests is the responsibility of the DTC participants.

*FIRST INSTALLMENT $9,820,000 SERIAL BONDS

Not Subject To Redemption Prior To Maturity

Maturity Date	Principal Amount	Rate of Interest	Maturity Date	Principal Amount	Rate of Interest	Maturity Date	Principal Amount	Rate of Interest
December 1, 1991	$1,120,000	%	December 1, 1994	$1,115,000	%	December 1, 1997	$1,075,000	%
December 1, 1992	$1,125,000		December 1, 1995	$1,110,000		December 1, 1998	$1,045,000	
December 1, 1993	$1,120,000		December 1, 1996	$1,095,000		December 1, 1999	$1,015,000	

Interest on the First Installment accrues on and after June 26, 1990, until maturity, payable semiannually commencing on December 1, 1990, and on each June 1 and December 1 thereafter until maturity.

*SECOND INSTALLMENT $12,380,000 (Initial amount) SERIAL BONDS, CAPITAL APPRECIATION BASIS

Not Subject To Redemption Prior To Maturity

Maturity Date	Amount on Original Issuance	Maturity Amount	Price Per $5,000 Maturity Amount	Approximate Yield to Maturity	Maturity Date	Amount on Original Issuance	Maturity Amount	Price Per $5,000 Maturity Amount	Approximate Yield to Maturity
December 1, 2000	$	$1,975,000	$	%	December 1, 2006	$	$3,300,000	$	%
December 1, 2001		$2,165,000			December 1, 2007		$3,815,000		
December 1, 2002		$2,400,000			December 1, 2008		$3,820,000		
December 1, 2003		$2,715,000			December 1, 2009		$4,000,000		
December 1, 2004		$3,130,000			December 1, 2010		$4,000,000		
December 1, 2005		$2,980,000			December 1, 2011		$4,000,000		

The "Amount on Original Issuance" for each maturity of the Second Installment appreciates to the "Maturity Amount", commencing on June 26, 1990, and thereafter over its term to maturity; the "Maturity Amount" shall be the only payment to be made by the Port Authority thereon.

*THIRD INSTALLMENT $77,800,000 % TERM BONDS DUE JUNE 1, 2025—YIELD %

Subject To Redemption Prior To Maturity

Interest on the Third Installment accrues on and after June 26, 1990, until maturity or prior redemption, payable semiannually commencing on December 1, 1990, and on each June 1 and December 1 thereafter until maturity or prior redemption.

When necessary to meet the schedule of mandatory periodic retirement, the Third Installment is subject to redemption, on prior notice, on December 1, 2005, and on any December 1 thereafter prior to maturity, at 100% of face value, plus, in each case, accrued interest until the date fixed for redemption. The Third Installment is also subject to redemption prior to maturity in whole or in part at the Port Authority's option, on prior notice, on the date to be fixed for redemption in such notice, at 101% of face value on any such date of redemption beginning on June 1, 2000, and thereafter prior to and including June 1, 2002; and at 100% of face value on any such date of redemption thereafter prior to maturity, plus, in each case, accrued interest until the date fixed for redemption.

The Sixty-ninth Series Bonds are offered when, as and if issued by the Port Authority and received by the Underwriters, subject to the unqualified approving opinion of Patrick J. Falvey, Esq., General Counsel of the Port Authority. The Sixty-ninth Series Bonds will be available for delivery in New York, New York, on or about June 26, 1990. The Underwriters have retained Orrick, Herrington & Sutcliffe, New York, N.Y., McCarter & English, Newark, N.J., and Wood, Williams, Rafelsky & Harris, New York, N.Y., with respect to certain legal matters pertaining to the Sixty-ninth Series Bonds.

Merrill Lynch Capital Markets	**Prudential-Bache Capital Funding**	**Dean Witter Reynolds Inc.**
Adams, McEntee, Fleet Norstar Securities, Inc.	Artemis Capital Group, Inc.	Carmona Ferrand Montes Securities Corporation
Cowen & Co.	First Albany Corporation	First American Municipals, Inc.	Gabriele, Hueglin & Cashman
Gibraltar Securities Co.	Grigsby Branford Powell Inc.	Gruntal & Co., Inc.	Halpert and Company, Inc.
Herbert J. Sims & Co., Inc.	J.B. Hanauer & Co.	Josephthal & Co. Inc.	Lebenthal & Co., Inc.	M•R•Beal & Company
Printon, Kane Group, Inc.	Pryor, McClendon, Counts & Co., Inc.	Reinoso and Company Inc.	Roosevelt & Cross, Inc.
Ryan, Beck & Co.	Samuel A. Ramirez & Co., Inc.	Stoever, Glass & Co., Inc.	WR Lazard, Laidlaw & Mead Incorporated

*Preliminary, subject to change.

June , 1990

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration, qualification or filing under the securities laws of any such jurisdiction.

NEW ISSUE

Moody's: A1
Standard & Poor's: AA-
Fitch's: AA-

General Counsel of the Port Authority is of the opinion, on the basis of his examination into the validity of The Port Authority of New York and New Jersey Consolidated Bonds, Sixtieth Series, Due 2023 and in the light of the actions of the Port Authority contemplated by and described in certain materials examined, that, under the existing Acts of Congress, the regulations thereunder, and judicial decisions, and assuming compliance with the represeniations in the Port Authority's certificate with respect to the use, investment and disposition of the proceeds of, and other actions to be taken in connection with, the Sixtieth Series Bonds, interest on the Sixtieth Series Bonds is not includible, for Federal income tax purposes, in the gross income of the recipients thereof under Section 103(a) of the Internal Revenue Code of 1986, as amended (the Code); provided, however, that no opinion is expressed with respect to the includibility of interest on any bond or bonds of this series, for Federal income tax purposes, in the gross income of the recipients thereof under Section 103(a) of the Code for any period during which such bond or bonds of this series are held by a substantial user (or a related person) of facilities provided by the Port Authority from the proceeds of the Sixtieth Series Bonds, within the meaning of Section 147(a) of the Code and the regulations relating thereto. Non-compliance with the representations in the Port Authority's certificate with respect to the use, investment and disposition of the proceeds of, and other actions to be taken in connection with, the Sixtieth Series Bonds may cause interest on the Sixtieth Series Bonds to be includible, for Federal income tax purposes, in the gross income of the recipients thereof retroactive to the date of issuance of the Sixtieth Series Bonds, irrespective of when such non-compliance may occur or be ascertained. General Counsel of the Port Authority is also of the opinion, on the basis of his examination into the validity of the Sixtieth Series Bonds and in the light of the actions of the Port Authority contemplated by and described in certain materials examined, that the Sixtieth Series Bonds and the interest thereon are exempt, under the Compact of April 30, 1921, between the States of New York and New Jersey and supplementary legislation, from any and all taxation (except estate, inheritance and gift taxes) now or hereafter imposed directly thereon by or under authority of the States of New York and New Jersey or by any political subdivision thereof. Interest on the Sixtieth Series Bonds is treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. The Code also provides for interest on state and local government obligations, such as the Sixtieth Series Bonds, to be taken into account in computing certain elements of individual and corporate taxes, including without limitation the environmental tax on corporations, the foreign corporations branch profits tax and income taxes on a portion of social security or railroad retirement benefits for individuals. The nature and extent of the Federal income tax consequences of these provisions depend on the particular Federal income tax status of the individual or corporate taxpayer and the taxpayer's other items of income or deduction. General Counsel of the Port Authority expresses no opinion regarding any such Federal income tax consequences. (See also, "Legal Opinion of General Counsel of the Port Authority" and "Tax Exemption" at pp. 4-5 and 60-61, respectively, of the Official Statement with respect to the Sixtieth Series Bonds.)

$100,000,000
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
Consolidated Bonds, Sixtieth Series, Due 2023

Dated: April 1, 1988 **Due: April 1, 2023**

The Sixtieth Series Bonds are direct and general obligations of the Port Authority pledging the full faith and credit of the Port Authority for the payment of principal thereof and interest thereon. The Sixtieth Series Bonds are secured equally and ratably with all other Consolidated Bonds (which includes Consolidated Notes) heretofore or hereafter issued by a pledge of (a) the net revenues of all existing facilities of the Port Authority (not including cars acquired under the New York State Commuter Railroad Car Program) and any additional facilities which may hereafter be financed or refinanced in whole or in part through the medium of Consolidated Bonds, (b) the General Reserve Fund of the Port Authority equally with other obligations of the Port Authority secured by that Fund, and (c) the Consolidated Bond Reserve Fund established in connection with Consolidated Bonds. The Port Authority has no power to levy taxes or assessments. The Port Authority's bonds are not obligations of the States of New York and New Jersey or either of them, and (except for New York State Guaranteed Commuter Car Bonds) are not guaranteed by said States or by either of them.

The Sixtieth Series Bonds are to be delivered upon original issuance as one fully registered bond in the aggregate principal amount of $100,000,000, registered in the name of the sole registered holder of the Sixtieth Series Bonds, Cede & Co., as nominee for The Depository Trust Company, New York, N.Y. (DTC). At the time of such delivery the Sixtieth Series Bonds are to be deposited with DTC, an automated depository for securities and clearinghouse for securities transactions, which will be responsible for establishing and maintaining a book-entry system for recording the ownership interests of its participants, which include certain banks, trust companies and securities dealers, and the transfers of interests among its participants. The DTC participants will be responsible for establishing and maintaining records with respect to the beneficial ownership interests of individual purchasers in the Sixtieth Series Bonds. Individual purchases of beneficial ownership interests in the Sixtieth Series Bonds may only be made through book entries (without certificates issued by the Port Authority) made on the books and records of DTC (or a successor depository) and its participants in denominations of $5,000 or integral multiples of $5,000.

Interest on the Sixtieth Series Bonds accrues on and after April 1, 1988, until maturity or prior redemption, payable semiannually commencing on October 1, 1988 and on each April 1 and October 1 thereafter, until maturity or prior redemption. During the period for which Cede & Co., as nominee for DTC, is the registered holder of the Sixtieth Series Bonds, the payment of interest on the Sixtieth Series Bonds will be made to Cede & Co., as nominee for DTC; disbursal of such amounts to DTC participants is the responsibility of DTC and disbursal of such amounts to the individual purchasers of beneficial ownership interests in the Sixtieth Series Bonds is the responsibility of the DTC participants.

When necessary to meet the schedule of mandatory periodic retirement, the Sixtieth Series Bonds are subject to redemption commencing on October 1, 2003, and on any October 1 thereafter prior to maturity, at 100%, plus, in each case, accrued interest until the date fixed for redemption. The Sixtieth Series Bonds are also subject to redemption in whole or in part at the Port Authority's option beginning on April 1, 1995, and thereafter prior to and including April 1, 1997, on prior notice, at 102% of their face value, plus accrued interest until the date fixed for redemption, and thereafter prior to maturity at declining prices. (See also, "The Present Offering" at pp. 1-5 of the Official Statement with respect to the Sixtieth Series Bonds.)

$100,000,000 8¼% Term Bonds due April 1, 2023

The Sixtieth Series Bonds are offered when, as and if issued by the Port Authority and received by the Underwriter, subject to the unqualified approving opinion of Patrick J. Falvey, Esq., General Counsel of the Port Authority. The Sixtieth Series Bonds will be available for delivery in New York, New York, on or about May 10, 1988. The Underwriter has retained Orrick, Herrington & Sutcliffe, New York, N.Y., and McCarter & English, Newark, N.J., with respect to certain legal matters.

Glickenhaus & Co.

April 21, 1988

The legislation further provides that part of the consideration for any lease or transfer of buses and ancillary bus facilities by the Port Authority shall consist of an agreement by the lessee to maintain and use such buses and ancillary bus facilities, or cause such buses and ancillary bus facilities to be maintained and used by others under agreement with the lessee, in the effective and efficient transportation of passengers in accordance with the legislation and that the Port Authority may accept such agreement in lieu of any other consideration for such lease or transfer. The Port Authority is not permitted to incur operating or maintenance expenses in connection with its capital programs to provide such buses and ancillary bus facilities and the Port Authority does not expect to derive any revenue from this capital investment in facilities.

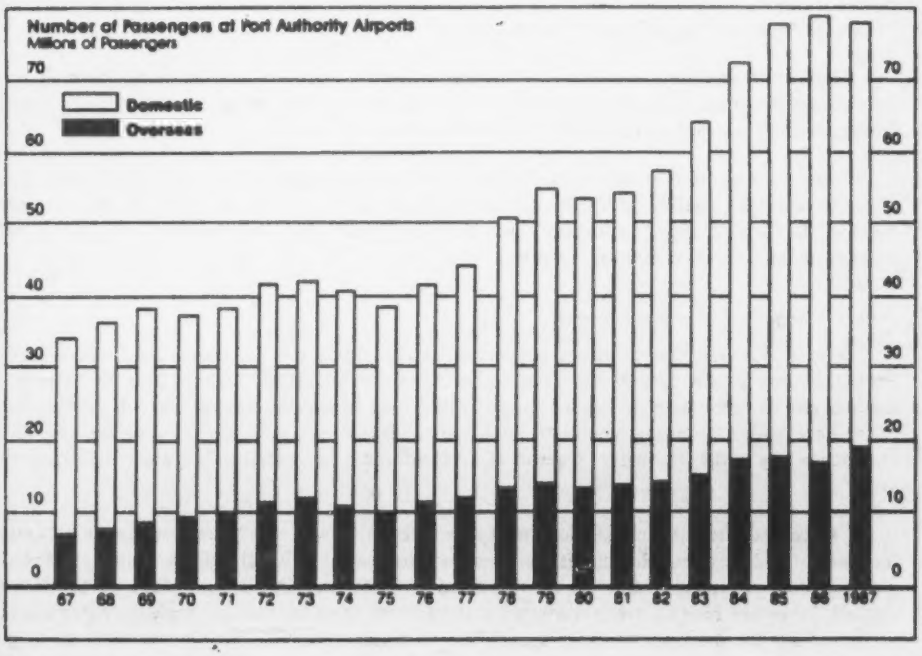
On March 8, 1979, and May 13, 1982, respectively, the Board of Commissioners of the Port Authority certified the Port Authority Bus Programs as additional facilities of the Port Authority and authorized the issuance of Consolidated Bonds for purposes of capital expenditures in connection with each facility (see *"Certification in Connection with Additional Facilities,"* p. 42). On May 13, 1982, the Board of Commissioners also certified the additional $200,000,000 of the Port Authority Bus Programs as required by the 1982 legislation. On May 28, 1982, the Governor of the State of New York, and on June 9, 1982, the Governor of the State of New Jersey, approved the additional expenditures based upon such legislative certification of the Board of Commissioners.

As of December 31, 1987, as part of the programs discussed above, the Port Authority had agreed to purchase 2,899 buses and related spare parts to be used under the Port Authority Bus Programs in the States of New York and New Jersey at a cost of approximately $438,300,000. A total of 2,851 buses were delivered by that date. The balance of the $440,000,000 programs is expected to be completed in accordance with a schedule established at the request of the two States.

The buses and ancillary bus facilities being provided by the Port Authority have been acceptable to the United States Urban Mass Transportation Administration (UMTA) as the local share which could support additional Federal funding to each State. In that way, capital funds provided by UMTA could be utilized by the States of New York and New Jersey for other mass transportation capital improvements approved by UMTA in addition to the bus facilities provided by the Port Authority. In addition, the Port Authority, together with other governmental entities in the States of New York and New Jersey, including the NYCTA and the New Jersey Transit Corporation, has entered into agreements to permit those public agencies to provide additional funding for the two States' mass transportation capital programs at no additional cost to the Port Authority through the use of appropriate safe harbor lease financing transactions in connection with the buses purchased by the Port Authority as part of the Bus Programs.

Air Terminals

The Port Authority owns or operates four airports and has developed two commercial heliports to serve the Port District. The following chart depicts the number of passengers embarking or disembarking at Port Authority airports for the years 1967-1987. The total number of passengers at the Port Authority's airports decreased to about 77,894,000 in 1987 from about 78,815,000 in 1986. Total air cargo handled at the Port Authority's airports increased to about 1,562,200 tons in 1987 from about 1,443,400 tons in 1986.



LaGuardia Airport

LaGuardia Airport is located at Flushing Bay in the Borough of Queens, N.Y., on the north shore of Long Island. It is about 660 acres in area. Opened under New York City operation in December 1939, it has been leased since June 1, 1947, together with John F. Kennedy International Airport, to the Port Authority by the City of New York. The lease, as amended, extends to December 31, 2015, and provides for basic annual rental payments to be made by the Port Authority to the City of approximately $2,000,000 through 1984, $3,000,000 from 1985 through 1997, and $3,500,000 for the balance of the lease term. The City receives additional rent in any year in which the basic annual rental is less than the amount of airport revenues after provision for Port Authority expenses and provision for debt service on obligations of the Port Authority incurred to provide capital improvements at LaGuardia Airport and John F. Kennedy International Airport. The additional rent was 60% of such amounts through the year 1984, and is 75% from 1985 through 2015. The rental formula was revised, effective January 1, 1985, to permit the Port Authority to include 30% of imputed debt service, as defined in the lease, in determining net airport revenues. The lease anticipates that improvements and investments at LaGuardia and John F. Kennedy International Airports from January 1, 1979 to January 1, 1994, will be at least $500,000,000. No attempt is made herein to summarize the lease, a copy of which may be examined at the office of the Secretary of the Port Authority during regular business hours.

LaGuardia Airport has two 7,000-foot runways, a passenger terminal with thirty-eight aircraft gate positions, two air shuttle passenger terminals with eight and four gate positions, respectively,

and a patron parking structure. An individual unit airline passenger terminal with nine loading gate positions, financed with the proceeds of an issue of Special Project Bonds, was completed in June 1983 (see *"Special Project Bonds,"* pp. 48-49).

The Port Authority's capital investment in LaGuardia Airport (not including the individual unit airline passenger terminal, described above, financed with the proceeds of an issue of Special Project Bonds) was about $357,536,000 as of December 31, 1987.

Plane movements (takeoffs or landings) at LaGuardia Airport for the year 1987 were about 356,000, about 24,226,000 passengers arrived or departed, and about 54,100 tons of cargo were handled. In the year 1986, the airport handled about 350,870 plane movements, about 22,189,000 passengers, and about 51,000 tons of cargo.

John F. Kennedy International Airport

John F. Kennedy International Airport is leased, together with LaGuardia Airport, to the Port Authority by the City of New York. (See *"LaGuardia Airport,"* pp. 20-21.) No attempt is made herein to summarize the lease, a copy of which may be examined at the office of the Secretary of the Port Authority during regular business hours. Opened on July 1, 1948, this airport is located at Jamaica Bay in the Borough of Queens, N.Y., in southern Long Island. It is about 4,930 acres in area.

The central terminal area of the airport now consists of eight individual unit airline passenger terminals, the International Arrivals Building and the Airline Wing Buildings, with total aircraft gate positions to accommodate up to 145 aircraft at one time, including spaces for the largest aircraft. Seventeen hangars are in operation at the airport, of which nine are presently being used to accommodate the demand for cargo space. The four major runways now in use range in length from approximately 8,400 feet to 14,600 feet. There is a 520-room hotel also located on the airport. The Port Authority's five-year capital plan (see p. 9) also includes present planning for redevelopment at John F. Kennedy International Airport generally to include a passenger distribution system, an automated baggage distribution system, a center for consolidating public transportation to and from the airport, roadway improvements, expansions of the International Arrivals Building and various other capital projects.

The Port Authority's capital investment in John F. Kennedy International Airport was about $1,009,472,000 as of December 31, 1987.

In the year 1987, the airport handled about 285,900 plane movements, approximately 30,193,000 passengers arrived or departed, and about 1,182,700 tons of cargo were handled. Plane movements at this airport for the year 1986 were about 279,150, approximately 27,193,000 passengers arrived or departed, and about 1,096,000 tons of cargo were handled.

In December 1961 the owners of some 428 parcels of property instituted an action in the Supreme Court of the State of New York, Queens County, against the Port Authority and 38 airlines operating out of John F. Kennedy International Airport, alleging that the noise of airplane flights diminished the value of their properties. As against the Port Authority, plaintiffs sought to recover alleged damages of 20% of the market value of their properties, and, for a period prior to the institution of the action, alleged damages of 20% of the rental value of their properties. With respect to the Port Authority, the plaintiffs' allegations that the flights constituted trespasses, a nuisance and a governmental taking of private property were held by the New York Court of Appeals to be barred for the period prior to December 1960.

Newark International Airport

Newark International Airport, approximately 2,300 acres in area located in the Cities of Newark and Elizabeth, N.J., was opened under City of Newark operation in October 1928, and has been leased to the Port Authority by that City since March 22, 1948, together with the Port Newark marine terminal (see *"Port Newark,"* pp. 27-28). The lease, as amended by an agreement executed on November 20, 1984, extends to December 31, 2031 and provides for guaranteed annual rental payments to be made by the Port Authority to the City of $6,000,000 for 1983, increasing by $1,500,000 annually until such payments reach $18,000,000 for 1991 and for each year for the balance of the lease term. The City receives additional rent in any year in which the guaranteed annual rental is less than the amount of airport and marine terminal revenues after provision for Port Authority expenses and provision for debt service on obligations of the Port Authority incurred to provide capital improvements at Newark International Airport and Port Newark. The additional rent was 60% of such amounts through the year 1985, and is 75% from 1986 through 2031. The rental formula was revised, effective January 1, 1986, to permit the Port Authority to include 30% of imputed debt service, as defined in the lease, in determining net revenues. The lease provides that payments by the Port Authority for community development projects relating to Port Authority facilities in the City of Newark to be made in the amount of $500,000 annually for the years 1985 to 1987, and $1,000,000 annually thereafter through 2031, be treated as capital improvements under the lease to the extent paid. The Port Authority and the City of Elizabeth have entered into service/operating agreements directly relating to the portion of the airport located in the City of Elizabeth providing for payments to be made by the Port Authority to the City of Elizabeth in the amount of $500,000 annually for the years 1985 to 1987, and $1,000,000 annually thereafter through 2031, which will be treated as Port Authority expenses under the lease. No attempt is made herein to summarize the lease or these agreements, copies of which may be examined at the office of the Secretary of the Port Authority during regular business hours.

The Port Authority has redeveloped Newark International Airport with new terminal buildings, a new runway 8,200 feet in length, and reconstruction of one of the existing runways which was lengthened to 9,800 feet. Two of the three new passenger terminals were opened in 1973. The superstructure of the third terminal was completed in 1974. A Federal inspection service facility within the third terminal building and a passenger walkway to the aircraft apron were officially opened in June 1984. In March 1984, the Board of Commissioners authorized, subject to final approval of the Port Authority's Committee on Finance, the leasing of the remaining portion of the third terminal. On January 11, 1985, pursuant to such final approval, a single passenger airline tenant entered into a lease for such remaining portion of the terminal. Effective August 15, 1987, the lease was assigned to the airline tenant's new owner and a supplement to the lease was entered into covering the long-term leasing and the completion of the construction of such remaining portion of the terminal. As of April 9, 1987, expenditures of up to $225,000,000 were authorized for payments to contractors and related costs with respect to construction on such remaining portion of such terminal, which is expected to be completed in the spring of 1988. There are presently three hangars and eight air cargo buildings in operation at the airport. Construction of an express package handling and sorting building on a 28-acre site, in connection with which the Port Authority furnished paving and utilities to the site, was completed in 1986. Construction of a hotel, which is located on the airport and which was not provided with Port Authority moneys, was completed early in 1985. The Port Authority's five-year capital plan (see p. 9) also includes present planning for redevelopment at Newark International Airport generally to include new structural parking, a passenger distribution system, roadway improvements and improved access for off-airport connections and various other capital projects.

LaGuardia Airport

LaGuardia Airport is located at Flushing Bay in the Borough of Queens, N.Y., on the north shore of Long Island. It is about 660 acres in area. Opened under New York City operation in December 1939, it has been leased since June 1, 1947, together with John F. Kennedy International Airport, to the Port Authority by the City of New York. The lease, as amended, extends to December 31, 2015, and provides for basic annual rental payments to be made by the Port Authority to the City of approximately $3,000,000 from 1985 through 1997, and $3,500,000 for the balance of the lease term. The City receives additional rent in any year in which the basic annual rental is less than the amount of airport revenues after provision for Port Authority expenses and provision for debt service on obligations of the Port Authority incurred to provide capital improvements at LaGuardia Airport and John F. Kennedy International Airport. The additional rent is 75% of such amounts. The lease anticipates that the cost of improvements and investments at LaGuardia and John F. Kennedy International Airports from January 1, 1979 to January 1, 1994, will be at least $500,000,000. No attempt is made herein to summarize the lease, a copy of which may be examined on reasonable prior notice at the office of the Secretary of the Port Authority during regular business hours.

LaGuardia Airport has two 7,000-foot runways, a passenger terminal with thirty-nine aircraft gate positions, two air shuttle passenger terminals with eight and six gate positions, respectively, a patron parking structure and a flight kitchen facility. An individual unit airline passenger terminal with ten aircraft gate positions, provided with the proceeds of a series of Special Project Bonds, was completed in June 1983 (see "*Special Project Bonds*"). An individual unit airline passenger terminal project with ten aircraft gate positions to be located at the east end of the airport, being provided with the proceeds of a series of Special Project Bonds, is expected to be completed in mid-1992 (see "*Special Project Bonds*"). The Port Authority's five-year capital plan (see "*Finances*") also includes present planning for redevelopment at LaGuardia Airport generally to include roadway and central terminal improvements and various other capital projects.

Total capital investment by the Port Authority in connection with this facility (not including capital investment provided with the proceeds of Special Project Bonds) was approximately $449,514,000 as of March 31, 1990.

Plane movements (takeoffs or landings) at LaGuardia Airport for the year 1989 were about 355,000, about 23,014,000 passengers arrived or departed, and about 63,500 tons of cargo were handled. In the year 1988, the airport handled about 358,000 plane movements, about 24,160,000 passengers, and about 56,500 tons of cargo.

LaGUARDIA — 21 MILLION PASSENGERS

John F. Kennedy International Airport

John F. Kennedy International Airport is leased, together with LaGuardia Airport, to the Port Authority by the City of New York, for a term extending to December 31, 2015. (See "*LaGuardia Airport.*") No attempt is made herein to summarize the lease, a copy of which may be examined on reasonable prior notice at the office of the Secretary of the Port Authority during regular business hours. Opened on July 1, 1948, this airport is located at Jamaica Bay in the Borough of Queens, N.Y., in southern Long Island. It is about 4,930 acres in area.

— 3000 plane movements in LAST YEAR

The central terminal area of the airport now consists of eight individual unit airline passenger terminals, the International Arrivals Building and the Airline Wing Buildings, with total aircraft gate positions to accommodate up to 145 aircraft at one time, including spaces for the largest aircraft. As of February 1, 1990, the Port Authority has taken possession of a unit terminal at the airport from its airline tenant, which is undergoing reorganization under Chapter 11 of the United States Bankruptcy Code, and such unit terminal is presently being operated by a contractor retained by the Port Authority. Seventeen hangars are in operation at the airport, of which nine are presently being used to accommodate the demand for cargo space. The four major runways now in use range in length from approximately 8,400 feet to 14,600 feet. There is a 520-room hotel also located on the airport.

On March 9, 1989, the Board of Commissioners of the Port Authority authorized a $3,200,000,000 redevelopment program for the airport, to consist of four phases, the first of which commenced in the spring of 1989. The scope of the redevelopment program for the period 1990-1994 consists of a new internal roadway system, new control tower, new parking garages, a hotel, reconstruction of the utility programs servicing the entire airport, a high-occupancy-vehicle exclusive roadway system servicing the airport's nine terminal buildings, and an automated on-airport people mover system; all of which is expected to be completed during the next five years at an estimated cost of $1,800,000,000 (see "*Finances*").

Total capital investment by the Port Authority in connection with this facility was approximately $1,258,626,000 as of March 31, 1990.

In the year 1989, the airport handled about 301,000 plane movements, approximately 30,316,500 passengers arrived or departed, and about 1,390,700 tons of cargo were handled. Plane movements at this airport for the year 1988 were about 303,000, approximately 31,160,000 passengers arrived or departed, and about 1,300,000 tons of cargo were handled.

In December 1961 the owners of some 428 parcels of property instituted an action in the Supreme Court of the State of New York, Queens County, against the Port Authority and 38 airlines operating out of John F. Kennedy International Airport, alleging that the noise of airplane flights diminished the value of their properties. As against the Port Authority, plaintiffs sought to recover alleged damages of 20% of the market value of their properties, and, for a period prior to the institution of the action, alleged damages of 20% of the rental value of their properties. With respect to the Port Authority, the plaintiffs' allegations that the flights constituted trespasses, a nuisance and a governmental taking of private property were held by the New York Court of Appeals to be barred for the period prior to December 1960.

Newark International Airport

Newark International Airport, approximately 2,300 acres in area located in the Cities of Newark and Elizabeth, N.J., was opened under City of Newark operation in October 1928, and has been leased to the Port Authority by that City since March 22, 1948, together with the Port Newark marine terminal (see "*Port Newark*"). The lease, as amended by an agreement executed on November 20, 1984, extends to December 31, 2031 and provides for guaranteed annual rental payments to be made by the Port Authority to the City of $6,000,000 for 1983, increasing by $1,500,000 annually until such payments reach $18,000,000 for 1991 and for each year for the balance of the lease term. The City receives additional rent in any year in which the guaranteed annual rental is less than the amount of airport and marine terminal revenues after provision for Port Authority expenses and provision for debt service on obligations of the Port Authority

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incurred to provide capital improvements at Newark International Airport and Port Newark. The additional rent is 75% of such amounts. The lease provides that payments by the Port Authority for community development projects relating to Port Authority facilities in the City of Newark to be made in the amount of $1,000,000 annually through 2031, be treated as capital improvements under the lease to the extent paid. The Port Authority and the City of Elizabeth have entered into service/operating agreements directly relating to the portion of the airport located in the City of Elizabeth providing for payments to be made by the Port Authority to the City of Elizabeth in the amount of $1,000,000 annually through 2031, which will be treated as Port Authority expenses under the lease. No attempt is made herein to summarize the lease or these agreements, copies of which may be examined on reasonable prior notice at the office of the Secretary of the Port Authority during regular business hours.

The Port Authority has redeveloped Newark International Airport with three passenger terminals, a runway 8,200 feet in length, and reconstruction of one of the existing runways which was lengthened to 9,800 feet. Two of the three passenger terminals were opened in 1973. The superstructure of the third terminal was completed in 1974 and a Federal inspection service facility within the third terminal building and a passenger walkway to the aircraft apron were officially opened in June 1984. The remaining portion of the third terminal was completed in the spring of 1988 and is leased to a single passenger airline tenant. Additionally, in June 1989, with the relocation of expanded international facilities at the airport, including the Federal inspection services, from the third terminal to one of the two passenger terminals opened in 1973, such single passenger airline tenant now occupies the entire premises of such third terminal. There are presently three hangars, eight air cargo buildings and a flight kitchen facility in operation at Newark International Airport. Construction of an express package handling and sorting building on a 28-acre site, in connection with which the Port Authority furnished paving and utilities to the site, was completed in 1986. The airport also includes a hotel constructed by private interests, which was completed in 1985 and expanded in 1988, and which is being operated pursuant to a lease agreement. The Port Authority's five-year capital plan (see "*Finances*") also includes present planning for redevelopment at Newark International Airport generally to include new structural parking, a passenger distribution system, roadway improvements and improved access for off-airport connections and various other capital projects.

In 1978, the States of New York and New Jersey adopted legislation to authorize Port Authority participation in the development of a new interchange and roadway approach system which was to link the passenger terminal area of the airport with the New Jersey Turnpike and provide a major southern gateway to the Port Authority's Elizabeth and Port Newark marine terminals. Capital expenditures in connection with the project were shared by the Port Authority with the State of New Jersey and the New Jersey Turnpike Authority, with expenditures by the Port Authority not to exceed $38,750,000 (excluding any interest during construction). The new interchange and roadway approach system opened for use in June 1982.

Total capital investment by the Port Authority in connection with this facility was approximately $939,898,000 as of March 31, 1990.

In the year 1989, Newark International Airport handled about 360,000 plane movements, about 20,906,700 arriving or departing passengers, and about 436,100 tons of cargo. Plane movements at the airport for the year 1988 were about 368,000; about 22,500,000 passengers arrived or departed, and about 449,800 tons of cargo were handled.

Mr. OBERSTAR. Thank you very much. I will have some comments in a moment.

At this point, we will recognize the gentleman from New Jersey, Mr. Smith.

TESTIMONY OF HON. CHRISTOPHER H. SMITH, A REPRESENTATIVE FROM NEW JERSEY

Mr. SMITH of New Jersey. Thank you, Mr. Chairman.

I would like to thank you and the other members of the subcommittee for providing us with this opportunity to address a matter of great concern, and I would like to insert parenthetically, Mr. Rinaldo, I have been here 10 years, and I have never seen unanimity among your Delegation on any issue. I think that is a testimony to just how important this is. It cuts across all ideological barriers. As Democrats or Republicans, we are agreed this is an important issue, and we are unified as a State.

Mr. Chairman, the aircraft noise issue, largely overlooked, needs forums such as this, and as you pointed out in your opening comments, a comprehensive review of the problem we face.

Since 1978, Mr. Chairman, the tranquility of many New Jersey towns in my District and elsewhere have been shattered by the persistent roar of aircraft engines, particularly the stage II aircraft. Some residents have suffered for even longer, since initial testing of aircraft routes began in September of 1986.

Years, Mr. Chairman, have passed without any relief whatsoever for the citizens of these communities. People who purchased homes over 50 miles from the nearest commercial airport, never expecting to be disturbed by low-flying jets, are frequently awakened by the sound of passenger aircraft flying at low altitudes over their homes.

Not only have residents been subjected to noise pollution by day, but by night the sky has been crisscrossed by aircraft as well. Citizens have reported deafening jet noise at all hours of the night, often only one or two minutes apart, shaking them from their beds without regard to the time.

There is very little relief, very little noise abatement for the people of Monmouth County in central New Jersey. Mr. Chairman, it is time for the Federal Aviation Administration and this subcommittee, as you pointed out, to take a long, hard look at what the expanded East Coast Plan has done to the people of our State.

While the stated goals of improving air traffic patterns and reducing flight delays are certainly laudable, the noise problem demands relief. Several months ago, at the request of some of the leaders in Monmouth County, I spent an entire evening in the backyard of a family in Colts Neck, New Jersey.

Frankly, I was shocked. In this community, which is nowhere near Newark or JFK Airports, every 60 seconds or so, a low-flying, ascending aircraft flew directly overhead, making conversation nearly impossible.

Here and elsewhere, jets fly directly over the homes and have a measurable impact on the quality of life in our communities. It is unconscionable to me that the FAA would initiate a new air traffic

pattern that would send aircraft over densely populated areas without first conducting an exhaustive environmental impact study.

Mr. Chairman, as has been pointed out, legislation has been submitted before this subcommittee concerning the aircraft noise issue. Hundreds of letters and phone calls have been directed to the FAA, and countless meetings have been held in my District and elsewhere to discuss and comment on the noise issue.

Even the GAO has issued a report to the Congress, prepared at the request of our Delegation, which addressed the EECP and many of these citizens' complaints.

Mr. Chairman, the evidence is compelling. I urge this committee to take action. Perhaps there isn't time in the 101st Congress to do so, but certainly as we reconvene next January. This issue has to be on the front burner so it can be resolved and the problem mitigated as quickly as possible.

I thank the Chair again for this opportunity to testify.

Mr. OBERSTAR. Thank you very much, Mr. Smith.

The Chair recognizes the gentleman from New Jersey, Mr. Payne.

TESTIMONY OF HON. DONALD M. PAYNE, A REPRESENTATIVE FROM NEW JERSEY

Mr. PAYNE. Thank you very much, Mr. Chairman.

I, too, would like to echo what was has been said in regard to the unanimity and overwhelming support of the New Jersey Delegation. As just a freshman in the Congress, I, too, am impressed by the turnout of Members of the New Jersey Delegation.

Mr. Chairman, I join my colleagues from New Jersey in commending you for your leadership and responsiveness in calling this hearing today.

Because I represent the Tenth Congressional District of New Jersey, which encompasses the Newark International Airport, I have long been concerned about the effect of airport noise on our local communities. The noise level disrupts the daily activities of all of our citizens, including school children, business people, and our seniors. Numerous hospitals and area churches are also subjected to the unpleasant effects of loud aircraft noise.

Mr. Chairman, I feel that my constituents, the residents of Newark and surrounding areas who have been subjected to this problem for so long, deserve the best efforts of the Federal Government to produce an environment that is as quiet and safe as possible.

It is time for us to join together to produce a sound and reasonable national policy on aircraft noise. The formulation of a national policy will help ensure that no one region is unfairly impacted by high noise levels.

As you know, during recent consideration of H.R. 5170, the Aviation Safety and Capacity Expansion Act, the House of Representatives sent a strong signal that we are anxious to address the problems of air safety and aircraft noise.

The Dean of our Delegation, Chairman Roe, led a successful effort to authorize funding for research and development programs to alleviate problems in the air transportation system. The House

also approved an amendment offered by our distinguished colleague from the Seventh Congressional District, Mr. Rinaldo, requiring the FAA to issue an environmental impact statement and conduct an air safety investigation on the FAA's expanded East Coast Plan.

I hope that our message of concern about the effect of aircraft noise on New Jersey citizens has been heard by the FAA. We need the full cooperation of the agency responsible for the safe and efficient operation of our air transportation system as we seek a comprehensive solution to this menacing problem.

Mr. Chairman, I would also like to voice my strong support for a national phaseout of stage 2 planes, which are noisier and less safe than stage 3 aircraft.

Under the present system, as the New Jersey Coalition Against Aircraft Noise has pointed out, certain airports receive a higher percentage of the quieter stage 3 aircraft. While Los Angeles and San Francisco both receive 61 percent stage 3 aircraft, the percentage for Newark is only 36 percent. I hope that we can develop incentives for the airlines to move expeditiously in phasing out the louder aircraft.

Another problem we face at Newark International Airport has arisen out of the uncoupling of Runway 11, which is used for an easterly landing pattern rather than the typical north to south landing.

When Kennedy and LaGuardia airports are fogged in, or in cases of heavy holiday traffic, planes are often diverted to Runway 11 at the Newark Airport. Both the Newark and Hillside communities are adversely affected by this diversion of flights. We have worked to get the air traffic controllers to limit access to Runway 11 to emergencies. I think it is only fair to local residents that the runway be used as infrequently as possible.

As the representative from Newark, I recognize the important economic impact of the aviation industry on our community. Newark International Airport generates about $3.5 billion in economic activity and provides 39,200 jobs. As a member of the City Counsil, I was involved in the renegotiation of the lease between the Port Authority and the City of Newark. This quantum leap of millions of dollars in revenue has been an enormous boost to the City of Newark, therefore providing tax revenues to our depressed area.

So, we must keep also in mind the economic impact as we move along. Our task is to produce a plan which will protect our citizens from harmful and disruptive noise levels without threatening the economic stability of the airport and the aviation industry.

Mr. Chairman, I look forward to working with you and my colleagues to meet this challenge. Thank you again for giving me the opportunity to express my concerns on behalf of the Tenth Congressional District of New Jersey, and I may conclude that regardless of where the planes fly, each of them lands in Newark. Thank you very much.

Mr. OBERSTAR. Thank you very much, Mr. Payne, and my thanks to all of the members of the New Jersey Delegation for expressing, each in their own way, a particular aspect of this complex web of problems that we know as aircraft noise.

Each of you has addressed the issue in a particular way, and collectively you make very thoughtful suggestions, but Mrs. Roukema, let me ask—by the way, I appreciate your focus on the larger issue, as you put it so well, the larger question of the national policy for aircraft noise, and we are determined to bend every effort in that direction.

In the meantime, I hope our aviation capacity and safety bill will be enacted and that the Administration will move immediately on the environmental impact statement for the East Coast Plan, in at least a short-term basis.

I would like to know whether the FAA on its own initiative consulted with members of the New Jersey Delegation about the expanded East Coast Plan in advance of its implementation.

Mrs. ROUKEMA. No, sir, they did not, and I don't know of any member of the Delegation who individually was consulted. Certainly, in the meetings we have held, there has been no indication from any of our members that there were prior discussions. So, if they were held, I was not aware of any of them.

Mr. OBERSTAR. Did any members of the Delegation or the Delegation as a whole request sessions with the FAA to discuss the East Coast Plan?

Mrs. ROUKEMA. Prior to the implementation?

Mr. OBERSTAR. Prior to its promulgation.

Mrs. ROUKEMA. Mr. Chairman, I am not qualified to answer that question. I know I did not anticipate the problem, nor was I consulted, nor was there any request made to have a meeting with the Delegation.

Mr. OBERSTAR. In short, it was just unloaded. Mr. Payne, is that your experience also?

Mr. PAYNE. At that time, I was actually serving on the municipal council, and we did have a lot of interaction with the Port Authority in regard to it, but the overall——

Mr. OBERSTAR. Not since you have become a Member of Congress?

Mr. PAYNE. Absolutely not. We had a hearing where they went ahead and talked about the plan, but not prior to its enactment.

Mrs. ROUKEMA. Mr. Chairman, I cannot speak for the actions of my other colleagues, but I can speak for my actions. It was most difficult for me to even get a hearing with the FAA Regional Administrator. They were totally unresponsive.

As a consequence, I took my problem directly to the Secretary of Transportation. He was kind enough to grant me a meeting—although after the fact—the implementation of the plan, when the problem began to become a live issue in the State.

The Secretary was kind enough to grant me an early meeting, and it was subsequent to that that the FAA Administrator and the Regional Administrator were willing to sit down and talk with me particularly, and then with the New Jersey Delegation.

Mr. OBERSTAR. Well, that is the problem, then, there was no consultation prior to—there should have been broad, widespread discussion prior to the promulgation of so wide-ranging, far-ranging and sweeping change that obviously was going to have consequences, and there ought to be—regardless of what the agency does in consequence of the consultation, there should have been prior

consultation, at least with Members of Congress, to let them know, and through them, perhaps their constituencies more appropriately, and in a broader context with all those whose lives and livelihoods would be affected by the change.

It seems to me in this democratic society of ours, the notion of inclusion is critical to governments.

Mrs. ROUKEMA. Well, certainly, I agree, and that is consistent, of course, with the bill I am putting forward. I would have one caveat. I do not know whether or not any contacts were made with the U.S. Senate Delegation and you would have to direct the question to them.

Mr. OBERSTAR. Thank you.

Ms. Molinari.

Ms. MOLINARI. Thank you, Mr. Chairman.

In conclusion, I only want to add I appreciate especially the focus on a national policy that we obviously have to develop. It seems to me that FAA has used all of us to reroute your traffic into my area and then to another area to defer any long-term, perhaps costly but necessary solutions, and the time has come that we stop pointing our fingers at each other and all unite and point our finger at the FAA and say, for everyone's well-being and long-term health, we need solutions that no longer impact one District as opposed to another, and in fact just helps the entire community in our community.

I would like to ask if possible, I know your schedules are busy, but because we are united in this effort, I believe on October 4th, representatives from my District and community members who are also concerned in impacting will be testifying before this committee, so perhaps you could send a staff member to share in some of the misery we endure on Staten Island.

Mrs. ROUKEMA. I would be happy to. I would like to say to the gentlewoman from Staten Island, I think we have all been used in this situation, and we do not want to turn one District against the other, and it is not an "NIMBY" attitude we have here. We are trying to develop comprehensive policy that will serve everybody's best interest, but nobody should be disadvantaged or abused at the expense of anybody else.

Mr. PAYNE. Mr. Chairman, I might also say we would be happy, too. I know, as my colleague, Representative Rinaldo indicated, Staten Island is closer, and I have seen you on the shuttle some mornings, so I know you come into Newark.

I know we have a common interest. I would like to also indicate the Port Authority of New York and New Jersey has been extremely cooperative with Hillside. Of course, they are not the FAA, but they have attempted to accommodate for many years when I was in county government and years ago in city government, so I would like to compliment them and perhaps they can have more input.

Finally, I believe since our system seems to work so well with incentives and disincentives, if there is no real disincentive for an airline company to move into the stage 3 because of the tremendous cost, then it is difficult to prod them along.

Perhaps we may have to reach the point in our history in aviation to look at incentives and disincentives for not moving to stage 3.

It is difficult to get people to get a smaller automobile. So, you can imagine what it is like to try to get someone to get another plane.

And so I would just like to suggest that if we made it economically doable and economically an incentive for them to move to stage 3 in light of the tremendous cost for new aircraft or perhaps a disincentive for using stage 2, perhaps we might be able to provide that along.

Mr. OBERSTAR. Let me interrupt to hear the gentleman from California, Mr. Mineta.

Mr. MINETA. Mr. Chairman, I want to thank you for your leadership on holding these hearings on the issue of aviation noise.

I can say having come from local government that I was, I guess you might say, propelled into this whole issue of airports and aircraft noise by what was happening in San Jose.

So I appreciate the testimony of our colleagues and feel very strongly that there is no question that this does require a close working relationship between the local, the state, the federal levels of government as well as the citizens who are impacted directly, as well as the airlines.

There is no question that between the issue of capacity, which is something everyone complains about when they can't get a seat on an airplane, safety issues, this does require the work of everyone involved.

So again, I would like to thank you for our colleagues from New Jersey for their testimony here today.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I believe you wanted to be recognized for something?

Ms. ROUKEMA. No, thank you, I think Mr. Mineta, that the question was covered very adequately.

I appreciate the sensitivity of the committee to our concerns.

Mr. MINETA [presiding]. Thank you very much.

Mr. Tom Duffy, Executive Director for an organization called NOISE, a National Organization to Insure a Sound Environment and Ms. Betty Ann Kane, Chairman, Board of Directors, Metropolitan Washington Council of Governments.

Mr. Duffy, Ms. Kane, I appreciate your coming forward.

Mr. Duffy, your statement will be made a part of the record as well as Ms. Kane's.

Mr. Duffy, if you would go ahead and proceed in your own fashion, sir.

TESTIMONY OF TOM DUFFY, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION TO INSURE A SOUND ENVIRONMENT, AND BETTY ANN KANE, CHAIRMAN, BOARD OF DIRECTORS, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

Mr. DUFFY. Thank you, Mr. Chairman.

I am Thomas Duffy, Executive Director of NOISE.

Sir, you are more kind than most who liken it to a fungus condition or growth. It is a national organization to ensure a sound controlled environment which is an organization of city government whose citizens are impacted by airport noise.

I am also testifying on behalf of the National League of Cities, an organization that with widespread city membership in all 50 states.

We congratulate the committee on holding these hearings. It has been a long time since an overall view on airport noise has been taken.

The Airport Aviation Safety and Noise Abatement Act of 1979, I believe that is the last time that anything that widespread has been done. We made a lot of progress since then. We need to make progress again.

If I could address four points and extract from my written testimony. We have fallen into the habit of using an aviation vocabulary to describe the aviation noise problem.

It is, in fact, an environmental problem, pure and simple. Because of this, we are entitled, in fact, should use the environmental policy and legislation in place in other fields as a model for dealing with it. The first point is that the polluter is responsible for the pollution as distinguished from those that receive it.

In aviation it is a little complicated because as a practical matter the air carriers who operate the aircraft who cause the noise, legally the airport operators are responsible in court for problems.

In any case, when looking to reducing noise, we should look to those who cause it.

A byword has been in other programs polluter pays. Another basic idea is that as regards to pollution, our aim is to reduce it. This gives us a handy way to look at proposals made in the name of aviation noise or aviation.

If it tends to decrease noise, it probably has some merit. If it is designed to maintain noise, it is questionable. And if it is designed to increase noise, it well could be rejected out of hand.

Environmental programs in this country are intergovernmental and work this way. The Federal Government recognizes the program, sets a noise standard, a minimum, usually tough noise standards, enacts some national rules that will work toward that and then requires state and local governments to act further beyond the federal rules in order to achieve the federal goal.

This is an appropriate means because the noise problem in every airport is different from the noise problem in every other airport in several respects.

I think we can set those points in place and use them as a way of approaching aviation noise.

Legislation toward a quieter fleet. The single most effective thing we can do to reduce noise nationally is to get quieter airplanes.

This is a point that FAA makes continually. The way to do this is to take two steps. First, do not get noisier airplanes in the United States.

The European Community adopted a rule which says that in October of this year no stage 2 aircraft may be registered in Europe. That means that the market for used stage 2 aircraft will become primarily the United States.

Unless we have some way of keeping these aircraft out of the country, what we are doing is importing aircraft noise.

Every stage 2 aircraft hereafter raises the fleet noise average.

We recommended that the committee and the Congress act as quickly as possible to adopt a non-addition rule and keep the wellspring of aircraft from moving into the United States.

There are sufficient stages to aircraft on the market now, the used aircraft market in every category of heavy aircraft. We do not need to import noisy aircraft from Europe for any reason.

Further, we recommend an end to the operation of the stage 2 aircraft achievement of an all Stage 3 fleet by the end of this century, December 31, 1999.

A date initially put forward by an informal industry task force appointed some years ago by the Administrator of FAA. NOISE has agreed to this with some reservations.

It could be done technically and economically probably about four years earlier. We recognize the need for planning for continuity and would not argue with 2000 as the date.

Any further time beyond that, however, keeps noise operating in the United States when it does not need to operate and may well put us again behind the curve of Europe and other countries.

I hesitate in a way to say it, but when we get to the turn of the century and we get to an all stage 3 fleet, we will not have opened some door and stepped out into an eternal springtime.

We will still have an aviation noise problem. It won't be as big. You will find from the testimony this morning from the New Jersey people who have what we call in-route noise, it will continue, it will not be solved. We think we need to make continuing progress.

The idea of stage 3.5 has been put forward. This is simply to say we take the best of the aircraft we have flying and being produced now and regulated and legislated toward the operation of only those aircraft.

This would mean that at some future date, 2015 is the number that comes to mind off hand, you would not be flying all stage 3 aircraft but only in Stage 3.5, gradual, economically doable, but also improvement in the environmental situation.

Local rules and local roles. The first federal aviation act, I believe, was passed in 1926.

The Congress officially and conclusively at that time adopted a policy much like that in use in the federal waterways at the time. The Congress would provide the airways, but if there were to be airports, they must be local.

Now that policy was started then and has been in force since. That means that an airport is a local decision, where, when, how big and for what purpose, locally funded largely.

In 1946 was the first time any assistance was given to local airports. Even then it was carefully written in that there were very few, if any restrictions, to be attached to that money.

When FAA was found in 1958, I believe, it was told stay out of the operation of local airports. That is a function of the localities.

They regulate for safety, they regulate for standardization. As far as operation, no.

One of the most important parts of that is that the airport is able to regulate the noise that affects the airport and its neighbors.

It does that for a very good reason. It is there to service the locality, to provide an entry into the aviation world, into the airways. But it has to balance that role against the environmental detriment that that causes.

Airports do that because only they in their position of accountability and authority can balance that. If you were to preempt their authority and give it to FAA, for instance, there would be the problems of liabilities which I am sure you will hear a lot about this week and or in the coming months in your hearings.

You will be destroying the ability of anybody to effectively regulate airports for noise. It will not be able to be done by a national organization like FAA.

There will not be the accountability, the motivation. If there is a need for standardization, that will reduce everything to the lowest common denominator that there will be no practical effort. If you preempt, communities will lose their best protection against noise.

Surprisingly, when you look at the record of federal, or local rules so far in noise, they have adapted to the ability of a fleet to keep up with it to an amazing degree. You hear some talk about the patchwork quilt and whatever, but aviation has not been seriously affected in terms of its ability to serve this country, which it does so well by the various noise rules.

If you look at the noise budgets, you will find that the air carriers themselves make their operating decisions about aircraft and about the number of times they fly and how quietly they fly based on business considerations, which is the way it should be.

If you look at other rules such as the ones where the port authority in San Francisco, the one talked about in Los Angeles now, and you will find that they take a date like the year 2000 and move toward that in carefully graduated terms.

As a matter of fact, we heard this morning LAX now has 16 percent stage 3 operations. They don't even require 50 percent yet. They are staying behind the ability of the fleet to match it.

I found that airports have been extremely sensitive and successful in doing so.

Noise and the community, land use and how it affects airports, how it affects communities. We have had a lot of talk about that. I know the chairman is strongly in favor of land use action.

We in NOISE say if the land is yet to be used, is yet to be developed, then, in fact, land use is a strong tool to be used to avoid and prevent a noise rule.

To the extent, however, that land has already been developed, land use as a tool in doing anything about the noise problem loses its value very, very quickly. I can think of only perhaps two instances in this country where highly developed land has been rehabilitated successfully, and those are both special circumstances.

Yes, we would want to work with the committee in developing some way for land use to become an effective tool in preventing and avoiding noise problems, but both the National League of Cities and NOISE would strongly say the right of local jurisdictions, the right of local airports to do this must be protected.

It should not be preempted.

Noise is obviously a major problem. It is not going to be solved this week or this year. It may not be solved this century. We have got to chip away at it to make it decrease as we go.

These hearings are a part of that process. We hope the legislation which will come forward will be a further step and thank the Chairman for holding these hearings.

I will be available for questions and be available in the future to work with your staff.

[The prepared statement of Mr. Duffy appears on p. 157.]

Mr. OBERSTAR [presiding]. Thank you.

You have touched on key elements. I will come back to your remarks in just a moment.

Ms. Kane.

Ms. KANE. Thank you, Mr. Chairman and members of the subcommittee.

I am Betty Ann Kane. I am pleased to provide comments on federal aviation noise policy this morning in my capacity as Chairman of the Metropolitan Washington Council of Government's Board of Directors and as Chairperson of the Council of Government's Committee on Noise Abatement at National and Dulles Airports, which we call CONANDA.

The Council of Governments is made up of 18 area jurisdictions. The District of Columbia, Arlington County, Fairfax County, Frederick County, Loudoun County, Prince Georges County, Prince William County and independent cities in Maryland and Virginia, and Alexandria, Bowie, College Park, Fairfax, Falls Church, Frederick, Gaithersburg, Greenbelt, Rockville and Takoma Park.

Let me add for the record, I am also Vice Chairman for Legislative Affairs of the organization that Mr. Duffy represents and a member of the Board of Directors of the National League of Cities.

I also might add in view of the previous panel, a native of New Jersey. The overall policy considerations that the national organizations are addressing here today, I think, are amply illustrated by our own local experience in the Metropolitan area in dealing with airport noise pollution at the local and the regional level.

Our committee CONANDA, was established by Congress in 1985 for the purpose of recommending airport noise mitigation measures to the FAA which then operated National and Dulles Airports.

In July 1987, the Metropolitan Washington Airports Authority, the successor to the FAA as the operator of those two airports, designated CONANDA as their preferred mechanism for community input into noise mitigation and noise planning.

Membership of our committee consists of local elected Legislative and Executive Branch officials, citizens representatives, the Airport Authority, the Air Transportation Association of America, the Airline Pilots Association and the National Business Aircraft Association, although the elected officials are the voting members of the organization.

We will submit for the record, I have attached to my testimony, detailed recommendations on noise policy that we have made to Secretary Skinner. I want to highlight today several major issues of particular interest at this hearing and that have come out of our particular regional experience here.

Number one is the need to respect local decisionmaking. As Mr. Duffy has said, national policy has long been that airports are to be built, owned and operated by local governments or local authority, which are combinations of governments.

In 1986, the Congress perfected this doctrine by transferring the only two federally operated airports to a regional authority. We believe that there is clear value in setting a national timetable, for example, for phase out of Stage 2 commercial planes in similar matters.

Board of Directors of Councils of Government has recommended an accelerated phase out of Stage 2 commercial aircraft from the domestic fleet.

We support the need for a strong national policy regarding the regulation of noise emissions. But, we do believe that national standards should be established as a minimum and should involve no preemption of additional measures that are appropriate to a local situation.

In addition, we believe any national standards that are enacted must clearly grandfather existing rules and agreements. We have a five-year history now of working with the industry, with our Airport Authority, reaching some agreement on some mitigation measures for National Airport would not want to see anything come in and undo all of that hard work.

The second thing I want to address is the limits of land use as a noise mitigation measure. Our experience in the Metropolitan Washington area clearly illustrated limitations of relying on land use planning as a major component of noise mitigation.

While it is appropriate for new airports or undeveloped areas, land use regulations is of little value in long-established communities that predate the federal airport grants.

For example, we have to ask what we would do? Rezone the 100-year-old coves of Capital Hill under the airport zoning for National Airport, or the 200-year-old Port of Old Town, Alexandria or rezone the Mall, the Capitol and the White House to industrial use to conform to the FAA's list of compatible areas, compatible uses for noise impact areas?

Those are impossible things to go back and do when you have uses that predate the airport's expanded operations. We are doing our best.

We say the DC City Council, for example, where I serve as an at-large member, has enacted a noise overlay zone which will restrict any new uses in the 65 LDN area, which includes the Haines Point and some other areas along the river, to uses that are compatible with the, that are on the FAA's list of compatible uses and will impose soundproofing standards.

But this is very limited. There is very little undeveloped land there.

And we believe very strongly that based on our experience, where there is developed land, federal assistance for noise abatement measures should be broadened, funding for retrofitting public buildings and even private residents should be fostered and that prudent regulation of late night aircraft operations ought to be an available and continuing method to mitigate noise.

The third thing I want to address is the need for a new metric to evaluate the level of noise pollution. Our experience clearly shows 65 LDN is not an accurate measure of the effects of airport noise.

In 1983, 1984, the FAA conducted at the Council of Government's request a test of all the National flight paths from National Airport, the so-called "Scatter Plan."

Professional surveys conducted as part of this test showed significant citizen annoyances at 60, 55 and lower levels of LDN, significant in percentages that equal those percentages used to establish 65 LDN originally. Our data suggest 55 LDN is a much more accurate level to use for land use planning, for example.

We have asked the Airport Authority to make that data available at the 50 and the 55 LDN for the area surrounding Dulles Airport, flight paths, day/night restrictions and liability matters.

In addition, our data and our experience suggests that the LDN itself, which is a blend of average noise levels and weighted for day/night flights, is a very unrealistic way to measure noise exposure and human reaction to it.

Frequency of flights, peak noise intensity, duration of sound are equally or sometimes more important measures. Experts tell us one stage to commercial overflight is equal in terms of cumulative LDN exposure the way the metric and the math works to many comparable Stage 3 operations.

None of us could tell our constituents that we would trade one Stage 2 aircraft for 10 or 100 Stage 3 going over one an hour versus one very minute. Although we understand the acoustical logistic between how the numbers work, it is not acceptable to our regions residents who are sensitive to the number of overflights as well as their sound intensity.

Therefore, we are pleased to learn that the FAA and the Environmental Protection Agency are undertaking a study to assess the adequacy of LDN.

We hope this is a serious effort that will not be deterred or determined by interest vested in the current 65 LDN standard.

Let me note that even baseball, the bastion of enshrined statistics, has recognized something was left out. They have developed a new measure called the on-base average, and baseball didn't fall apart.

We are sure aviation industry, the airline industry, the airline industry and certainly our communities will survive and profit from a new and more realistic standard to measure noise requirements also.

In conclusion, Mr. Chairman, these and other aviation noise issues are detailed in our attached correspondence with Secretary Skinner.

I want to thank you for the opportunity to present the Washington region's views on these issues, affected residents of the area and of the nation.

Let me say that we appreciate the opportunity. We will remain available to work with you here in Washington. We do have a laboratory, if you will, available to all the Members of Congress to experience how we can work together to solve this problem.

Thank you.

Mr. OBERSTAR. Thank you very much, both witnesses, for very, very thoughtful testimony on each of the principal components of the noise issue. There are many elements.

It is going to take all of them together to develop a national policy. Of course, one of the apparent internal contradictions is the call by so many groups for a national policy, please don't preempt local authority, please grandfather in existing rules, please don't disrupt anything we have already constructed, but do establish a national policy.

It is going to be difficult to work through that. We will have to keep that all in mind as we go through this process that we are initiating today.

Mr. Duffy, you propose that we develop a new Stage 3.5, so to speak and set it at the level of the quietest aircraft currently in the fleet.

Have you developed technical data on the feasibility of redesigning existing Stage 3 aircraft?

Mr. DUFFY. No, sir; 3.5 suggested does not envision the redesign of existing aircraft. It envisions the rescription of existing aircraft.

Some Stage 3, aircraft right, the ones that are built Stage 3, operate right on the margin. They are Stage 3 and a little bit better.

Those hush kit aircraft that will be coming in will operate, many of them, exactly on the margin.

Other aircraft, the more advanced 737, 400's, 757's, et cetera, and the 11's, operate well within the zone Stage 3.

They are much, much quieter aircraft both to the air and to the acoustic technician.

What noise is proposing is that at some future date we say stop making the not quiet, or the just barely Stage 3 aircraft. Let's only make the ones that are well within the zone.

Let's then wear out the just barely Stage 3 aircraft, to use an instant term, and get rid of them at some economic date like 2015. This is merely a description of existing aircraft.

I understand that FAA and NASA are entering an agreement to look at the possibilities for a Stage 4, but there is nothing in sight right now.

Mr. OBERSTAR. Well, technology does offer some encouragement. That is one of the many elements of dealing with noise.

We need to pursue the opportunities for re-engining, hush kit and new generation engines as well as progress on air frames and put that together with local land use zoning and keeping development out of it, out of harm's way, if you will, out of noise way, and bring all those elements together to get us on the right path.

Mr. DUFFY. Noise and the National League of Cities are working with FAA right now to work out ways of doing the land use thing to achieve the goals of protecting airport noise, of ensuring compatible use and respecting the rights of local jurisdictions.

We are engaged in an active study to do that with FAA at the moment.

Mr. OBERSTAR. Considering the cost of moving to Stage 3 aircraft or re-engining older generation 727's, DC 9's, and so on, and there are some new developments and new technologies that will make it possible to put new engines on older aircraft that will significantly reduce noise, do you think the Federal Government ought to have

a role, if so, what should it be, in preventing airport proprietors from imposing restrictions on the use of Stage 3 aircraft?

Mr. DUFFY. I am not sure I got the drift. I think as a matter of policy we are——

Mr. OBERSTAR. If there is all this cost and such aircraft owners, airlines are required to put out very considerable, great expenses to develop aircraft that meet those very stringent noise limitations, should then the Federal Government also have a role locally in preventing airport operators from restricting operations of those aircraft?

Mr. DUFFY. No, sir.

Airports are not going to cut off the source of, or the purpose and the source of their being. They are not going to go out and tell operators, you can't operate here, you have to go somewhere else, except to the most minimum degree that they need to to make their own operation environmentally successful.

The airports don't want to stop airplanes from landing there or taking off from there, but they have to in order to match their service with their environmental degradation.

Mr. OBERSTAR. Ms. Kane, you talked about the so-called limits of land use, a term that you use, and there are some limitations, especially in an older settled area like Washington, DC.

I think it is clear most airports, to borrow a phrase from literature, "just growed like topsy." And they do. They just sort of developed.

Now we have in Washington, DC area a very densely settled area, with narrow corridors. You propose grandfathering existing local rules into any future noise policy and suggest that there are some limits of land use zoning.

But in an area like Dallas, Fort Worth, for example, where the Greenfield new airport was built, state-of-the-art, to provide a haven for aircraft away from people, now that they need to put the further runway in, this new additional runway that will cost as much as the original airport to build, objections are being heard from people, businesses and manufacturing facilities that were allowed to build in what will now be the noise footprint of the new runway. It seems to me—we will explore this further.

It seems to me somebody failed. If local government says leave it to us, then they have a responsibility to act as well.

And I draw a parallel with the Federal Government's prohibition on building in a flood plain. We have done that in this committee. Why should we reimburse people who knowingly build structures in an area that the Corps of Engineers has determined to be perennially prone to flooding and then bail those people out with other federal dollars when they have attempted to defy the laws of nature?

We should discourage rather than encourage policies of that nature, or actions of that nature. There are some similar actions that are, or lessons to be learned for aviation noise; don't you think?

Ms. KANE. I think you can an illustration of that in our region here in the two different approaches that our committee has recommended and the jurisdictions have taken at National versus Dulles Airports, which was built at what was once far from town.

Hopefully, with rapid transit out there, it will be less far from town. Fairfax County surrounding Dulles County put and did legislate through its land use plan buffers around that airport so that there is not as much problem in expanding there.

But it is also one of the reasons why we have asked the Airport Authority to make available to the, particularly to Fairfax and Loudoun County, which are the two countries that Dulles straddles, the noise footprint data not only for 65 LDN but for 60 and for 55.

We know from other experience that when you go back and start doing it that people in those other levels are going to feel the impact of noise.

So, it is not fair even to an airport or to a community to say if you simply restrict within the 65 LDN, that you are going to solve the problem.

But without a lower metric or a different metric having some official recognition and some scientific backing, it is both legally and politically difficult to put land use restrictions at a lower level.

Mr. OBERSTAR. Thank you.

Mr. Mineta.

Mr. MINETA. Mr. Chairman, I have no questions except to thank Tom for his long years of leadership on this issue. I have worked with Mr. Duffy when I was still active with the National League of Cities as well as after having come as a Member of Congress, and recognize very strongly the work of NOISE.

Of course, I would like to salute the leadership exhibited by Betty Ann Kane. Having been part of this issue of putting together the Metropolitan Washington Airport Authority and trying to be sensitive to the noise that is being created by this airport, we have to accommodate the citizens of this area as well as the need for an airport.

Having worked, Mr. Chairman, with these two very outstanding individuals, I again appreciate their testimony here today.

I know that with their effort we will find some solution. Even though it is going to be a tough one, it is going to be one that I think will lead towards the advancement of environmental policy.

As Tom indicated, it is not an airport or aviation noise issue. It is an environmental issue and something that we have to work on together.

Again, I would like to thank our two witnesses today and you, Mr. Chairman.

Mr. OBERSTAR. Well, let me return the compliment to the gentleman from California who as Chairman of this subcommittee for eight years grappled with this issue and helped to shape thinking and begin the process for national policy or shaping of a national policy on noise.

The gentleman contributed many long and difficult, very thoughtful hours to that subject.

What has been the benefit, if any, or affect of scattered plans? I refer to Ms. Kane's testimony.

Ms. KANE. The scatter plan was a test in the Washington area.

I think the political benefit was that it made many other people aware of what some people in a particular region were experienc-

ing. It heightened the consciousness about the need to do something about airport noise.

The result was, however, because of that flight paths when back to the original—it was a test. It was not put into effect on a permanent basis.

It created a much greater awareness and therefore a much greater resistance to sharing airport noise.

Frankly, it forced our committee and the whole Council of Governments to start looking at other ways besides simply taking the problem and spreading it out a little better, to seriously reducing the impact noise.

Mr. OBERSTAR. Thank you.

Mr. DUFFY. I think they prove noise is a matter of perception. If in the Washington area you tried an experimental program and the people who have never heard noise don't think they want to have the noise, they react almost violently.

I lived in Annandale at the time and didn't really notice the noise but had neighbors up in arms all the time about that.

In Minneapolis/St. Paul, people who live all around the airport, they know that the noise will be there and they take rotational runways or preferential runways and rotate them during the day.

They regard that as a fair way of apportioning the noise. Something like that happened at West Palm Beach with fanning of flights directly West, partly North, Northeast and Southeast, a fairly satisfactory solution.

As with every other aspect, it depends on the people or the airport who are in place at the time.

Mr. OBERSTAR. Thank you.

Mr. MINETA. You mentioned the Twin Cities Airport. Isn't there something unusual in that situation?

The state gave the Airport Authority some kind of land use controls around the airport?

Mr. DUFFY. No. The COG has land use control around the airport.

Mr. MINETA. The COG has, which is unusual in the sense that usually the local jurisdiction has control of the land use.

In this case it has been delegated to the area governmental agency.

Mr. DUFFY. By the state, right.

Mr. MINETA. That is the point that I was trying to make. It wasn't the Airport Authority, but it was the COG that had that land use, which is very important.

Very few communities have that kind of attribute to be able to really look at the broader views, look at the—and not the parochial interest of the local jurisdiction that may own the airport.

I think that makes it a very unusual situation in the Twin Cities area.

Mr. DUFFY. A variable of that operates in California with the Airport Land Use Commission.

Mr. MINETA. But you have to have a two-thirds vote at the local city council to override the decision of the Airport Land Use Council.

Frankly, there were times in trying to support the airport land use control decision, trying to keep the city council of San Jose, to

keep them from overriding that by a two-thirds vote was tough because, you know, the parochial interest of the local government is to protect the airport and stick it to the airport land use council.

So I used to always have to caution the council about taking that kind of action. I think what we are facing right now in San Jose with the safety and noise problems of a general aviation airport with people saying we ought to close Reid Hillview airport becomes a major iesue. This isn't even a commercial airport.

This is a general aviation airport within the city limits of San Jose.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The Gentlewoman from New York.

Ms. MOLINARI. Thank you, I have so many questions that were brought to bear by virtue of your testimony underscored by your statement that we are facing a complex situation of local control begins and is appropriate and will act in the best interest of its constituents, being the aircraft and the people that live around it, and the people that live around it, and where we have a federal obligation to ensure interstate travel and also the fact that one community does not impact another.

Therefore, I will close by thanking these two Representatives for bringing these important decisions yet to come to my attention, anyway.

Thank you.

Mr. OBERSTAR. The Gentleman from Pennsylvania have questions?

Thank you very much.

We appreciate your very, very thoughtful contributions.

Our next witnesses include our distinguished delegation from Michigan. The Chairman of the Energy and Commerce Committee, Mr. Dingell; Chairman of the Post Office and Civil Service Committee, Mr. Ford; the Honorable Susan Hubbard, Commissioner, Wayne County, Michigan. Mr. Edward H. McNamara, County Executive of Wayne County. The Honorable Cameron Priebe, Mayor of Taylor City. Mr. Brian Amann, Assistant County Executive, Wayne County, Michigan.

Mr. FORD. Chairman Dingell is presiding in another room. He just finished testifying before one of my subcommittees before we came over here.

He is on his way and should join us shortly.

Mr. OBERSTAR. We are glad to have you, to have this fine delegation to share with us your thoughts.

The Chairman of the Post Office and Civil Service Committee is not a shy Member of Congress. He is straightforward, direct, tells it like it is. This gentleman has enormous respect for the gentleman from Michigan.

We are glad to have you here to help us think through this thorny issue.

TESTIMONY OF HON. JOHN D. DINGELL, A REPRESENTATIVE FROM MICHIGAN; HON. WILLIAM D. FORD, A REPRESENTATIVE FROM MICHIGAN; SUSAN HUBBARD, COMMISSIONER, WAYNE COUNTY, MICHIGAN; EDWARD H. McNAMARA, COUNTY EXECUTIVE, WAYNE COUNTY, MICHIGAN; CAMERON PRIEBE, MAYOR, CITY OF TAYLOR, MICHIGAN; BRIAN AMANN, ASSISTANT COUNTY EXECUTIVE, WAYNE COUNTY, MICHIGAN

Mr. FORD. Thank you.

I thank you for your prompt response to people who are directly on the hot seat in the area of Congressman Dingell's district and mine, suburban to Detroit. The Detroit Metropolitan Wayne County Airport is in my district.

But as it was just alluded to, I think indirectly if not directly by Ms. Molinari, the airport doesn't affect just the community in which it is located. Some of the communities in our districts have been experiencing problems because of the rapid build up of the Detroit Metropolitan Airport and the fact that we share air space with four other airports in the region.

I am here this morning to introduce the Mayor of my home town who I would say parenthetically, Mr. Chairman, is the kind of bright young man we have all too few of pursuing public service today.

He started out as a policeman in our community. He was a police officer for nine years, was elected to the city council and became the council chairman and, since 1981, has served as Mayor. He has been very much involved with the problem which surfaced several years ago and has become increasingly worse, in part, Mr. Chairman, because Northwest decided to move its home from your state to our state.

We did everything we could to get them to do that. Now we have to live with the consequences of having so many more airplanes there and having the service there.

Mayor Priebe is going to talk about a little different aspect of the noise problem.

I would like to introduce Mayor Priebe of Taylor, Michigan.

Mr. Mineta, I have already warned him there is a former tough mayor from San Jose on the committee. He has to keep that in mind.

Mr. OBERSTAR. Welcome.

Please proceed.

Mr. PRIEBE. Thank you, Mr. Chairman.

Congressman Ford and others have helped to give us an opportunity to speak before you. Our concerns probably aren't anything you haven't heard 100 times.

Just in case you haven't, we wanted to reiterate them.

I think that you have, or your staff at least has a written copy that has been dubbed "War and Peace" by the county officials.

I will be much more brief in my verbal comments.

We want to try to make six points. First, safety, economic development, noise, water quality and quantity, some land use and planning issues and finally quality of life.

I would hope that you would use that quality of life standard in all of your deliberations regarding airports and expansions and noise and all the issues you are charged with.

The bottom line, that is what is it is all about.

First of all, we think that the FAA's first and foremost responsibility must be safety. I don't exactly understand what is going on now.

I know there is a process in which they are restudying some changes in our area that were made allegedly because of safety concerns to improve safety at the Detroit Metropolitan Airport.

We are concerned any changes that may result will not sacrifice safety for political or other reasons. Further, we are concerned, depending upon what those changes are, they could severely impact upon our community negatively if they should change those flight patterns and run them over our neighborhoods more than they already have.

Naturally we oppose that.

We speak to you about safety. Last fall we had eight near misses at our airport.

I am told that is why the FAA made the changes. From our perspective, we hope they have a tremendously good reason if they should change back.

We speak to you about safety a couple of years after 255, the disastrous crash which occurred about a half a mile out of our jurisdiction.

I speak to you of that one from a personal account, because I was there as the aircraft was on fire, as was the executive.

Our police and fire personnel worked around the clock for several days assisting in that particular issue which cost our general fund a fair amount of money which has not been reimbursed.

As good neighbors, in all emergencies we do assist. We know that part of the aviation. The question is the personal families involved, many policemen and firemen went through months of counseling as a result of dealing with that tragedy.

Unless you have been involved in war, it is the worst possible tragedy. We are concerned about safety for a variety of reasons.

Last month we are told one of the airplanes because of engine problems dumped 10,000 gallons of fuel over one of our neighborhoods in preparation of what might have been an emergency landing.

Thank God it turned out not to be a crash landing, at any rate. The bottom line, our position with regard to safety issues are safety first.

But if possible, run those flight tracks in such a way that they don't impact neighborhoods.

And if indeed they are going to be changed, we think local communities ought to have some input. Not just the operator. In this case the county runs the airport. But local communities affected by that ought to have some input into these changes.

We understand the economic development positives associated with an airport. Our Governor a couple of years ago ran on three issues.

Jobs, jobs and jobs. An airport does generate jobs, does generate tax base.

We are very cognizant of that. We are a neighbor of this airport and we benefit largely.

Seven hundred Taylor families work for the airport or airport support related services. It is an important economic factor in our region.

As a matter of fact, we are very proud that our particular city has been one of the leaders in economic development with tax abatement and road infrastructure improvements to attract industries, with a trade staff. As a matter of fact, as a result of growth in our community, local taxes are less today than they were back in 1981 because our tax base is growing.

Even though we spend more and we have been able to improve services at a lesser rate because of an increased tax bas[illegible]ve do understand those positive things associated with the airport.

Another question is economic development shouldn't be the only consideration. It is important, but it is not the only consideration.

Depending upon some of the changes being talked about, perhaps the price is too high. We have to be concerned, and you, the Congress and the FAA and the people that really make a difference have to be concerned about environmental issues and quality of life issues.

Ultimately we are not entirely sure those things are factored into the equation, at least not to our satisfaction. That brings me to my next two points which are environmental in nature.

First is noise, the second being water.

We think that the Federal Government ought to mandate Stage 3 as quickly as possible. Working with other groups like NOISE and others, we think that perhaps the Year 2000 is not unrealistic.

It is certainly ambitious, but not unrealistic. We think the government ought to be more concerned about ground noises associated with airports.

I understand that is not directly under FAA jurisdiction. However, the Federal Government through the power of the purse has an awful lot of control and expansion of these airports is funded through FAA monies.

Therefore, you ought to be looking at those noise generated problems. Those aircraft not only make noise when they are taking off and landing, but they make a great deal of noise when they are sitting on the ground, noises which is heard, I am personally impacted from that one.

I live five miles from the airport. When they are reeving their engines after checking them out to make sure they function properly, it rattles the pictures on my walls at my house five miles from the airport.

There is tens of thousands of people that live between me and that airport.

We think the measurement standards utilized aren't particularly useful. LDN, a process by which the average noise over day and night, doesn't realy measure the noise impacts in neighborhoods.

If we were to set off a stick of dynamite in this room daily measured with the LDN standard, you would have no noise problem. If you lived directly next door to Kennedy, you could have two flights a day and not exceed 65 LDN's.

I suspect the bomb in Hiroshima probably didn't meet your noise standards. Therefore we have to continue to use that measure but implement other measures impacting noise as well.

We think that any airport that is going to receive additional federal funding ought to be having a noise, an aggressive noise operations policy.

The Detroit Airport does not. Forty-percent of all airports nationwide do have noise policies. Four hundred airports nationwide, according to this morning's USA Today, have noise policies.

Those things obviously cover a variety of things such as ground operations and restricting hours of operation, noise surcharges, penalty in effect for those that fly noisy aircraft, regulating cargo flights which are some of the nosiest which generally take place at nighttime and create some of the greatest problems.

Many of the noise issues related to an airport, at least from the Detroit set up is under the control of the local operator.

Part of the problem is those of us that are impacted, those of us that are neighbors of that airport have no real voice, no real input into the process, into the decisionmaking associated with that airport. That should be corrected.

In the Detroit Airport we are looking to dramatically increase flights over the next several years. That translates into dramatically increased noise problems.

I will talk briefly about water problems. We have not only water quantity issues in our airport, but water quality issues as well.

We believe the Federal Government should mandate strong retention basins as airports develop. We start putting hundreds and hundreds of acres into concrete, naturally the runoff is much quicker.

We have not only the advantage of being near the airport or disadvantage from the noise point of view, but downstream from the airport, so that the water that flows off, frequently flows off uncontrolled and creates flooding problems.

The EIS, the environmental impact statement does address those issues. However, that is not binding on anybody. Perhaps it ought to be.

In our city we think that drainage is to large measure a local responsibility. We have spent more than $10 million in the last several years dealing with local flooding.

We built for huge retention basins for storm weather. We are in the process of studying building two additional currently. We spent block grant money and local resources cleaning county drains which technically aren't under our jurisdiction because we had to deal with flooding issues. Low and behold, on February 22, 1990, we had a 2.4 inch rainfall event.

The airport was caught unprepared since their retention basins were full. It becomes a complicated issue, but they have some pollution problems they were trying to address. At any rate, they had full basins and made a conscious decision to discharge water on to our communities overflowing the open drains that run through our communities to the east of the airport causing tremendous flooding and millions of dollars in damage as opposed to closing down the airport.

They pumped the water into the basins and let out with gravity. So that if they shot off pumps, they may have closed the airport, but they wouldn't have flooded us.

We think that we can sort of approve that because based upon a rainfall event a couple of weeks ago, September 6, when we had 1.1 inch more rain or 3.6 inch rainfall event, the county managed their basins properly and we had virtually no flooding, in a much larger storm event.

Our request is the Federal Government mandate that local operators do a better job in managing their storm water.

Further, the water frequently discharged is dirty water. Last Thursday there was a 1,600 gallon fuel spill into one of the open drains that runs through a populated area of our community and several other communities further to the East.

The Southeastern Michigan Environmental Resources Association press release says, and we have a full report if anybody is interested in it, and I quote, "Waste water discharge of ethylene glycol and 1, 4 - dioxane by the Detroit Metro Airport has gone unchecked for years. Ethylene glycol in small doses is lethal while 1, 4 - dioxane in minuscule doses is carcinogenic. Each year Detroit Metro discharges a minimum of approximately 70,000 pounds of ethylene glycol and 416 pounds of 1, 4 - dioxane."

SMERA revealed that Detroit Metro Airport committed more than 800 violations of its waste water discharge per minute. Our concern is not only the water they sometimes flood us out with if they don't manage things correct.

The bottom line is they are discharging dirty water as well.

You, the Congress, has done an unbelievable good job in cleaning up the Great Lakes and the Detroit River. Here is a pollution problem that if we are going to correct it, and I know that the Executive and his staff are working on trying to correct some of these things, but if we are going to expand the airport that must be part of the equation.

Talk about land use and planning related issues, the bottom line of what we are asking for is improved cooperation, improved communication, allowing local communities a meaningful voice in the process.

We participated for about two years on policy and technical committees associated with the part 150, and the entire environmental impact process. We believe that, first of all, they are not binding.

Secondly, we had no expert assistance to assist us. We were given 30 days to take this environmental impact statement and try to read it and digest it and understand it and comment on it. That is ridiculous.

Mr. PRIEBE. We did comment, I am not sure we read the whole thing or understood it. What we are really requesting is that meaningful dialogue be part of the process, realizing the dialogue means more than the ability to speak, but somebody—I don't want to get into the problems Biden had a couple of years ago—I don't remember who said it, but it means also the willingness to listen and to act.

Currently, that part of the equation doesn't exist in our area. It is only after a petition drive to stop the sale of bonds and a lawsuit were filed that the process to improve such issues such as night

flight restrictions and hush houses and stage 3 and some of these other things have been meaningfully discussed back in our Districts.

We think further we should have an opportunity to participate in the airport master plan. My community shares a border six miles long, one mile over from the airport, but six miles long with the airport, and we are not really even sure exactly what we intend to do, because the master plan continually changes.

Naturally, that impacts on our community development. Our community is about 40 percent undeveloped. If our community is managed and planned properly, it can develop really well, but since this makes such an environmental impact, it is important we know what is going on in the airports so we can plan our own.

We can be involved in road-related issues since they impact on us. I know there is some discussion about putting a ring road around the airport. We should be involved in water and sewer planning projects. They are regional—as well as noise.

Finally, quality of life. According to the environmental statement in 1986, more than 15,000 Taylor people were impacted in neighborhoods with 65 LDNs. I think the LDN is totally unrealistic. According to the 65 LDN, 16,000 Taylor people have a noise problem. What this really means is people can't enjoy simple pleasures of life, having an outside barbecue, watching television, carrying on a normal conversation.

We had an opportunity—and as fellow elected officials, I suppose you guys also have to go out door-to-door and campaign, and maybe that is good for us, because last fall, in the process of campaigning in one of the more severely impacted neighborhoods door-to-door, I would find myself not being able to carry on a conversation with my constituents, being invited into their homes and having to pause while aircraft pass. I frankly didn't know that before, and I am appalled as I learn that.

Further, the adverse impact that noise and some of these other related issues have on the values of our homes. The people that live in these neighborhoods before this airport grew and expanded bought homes with some reasonable expectation their homes would improve in value, as most of our homes have.

In some of these neighborhoods, because of noise and other airport-related problems, the values have remained stagnant and they are 20, 30, 40 percent below similar neighborhoods in our regions. We think that is unfair, and that has an impact on our tax base as well.

We would request the Federal Government mandate operators to establish noise policies and that we have meaningful local involvement in that entire process, and I think in the long term, the best solution is to rush as quickly as possible toward implementation of the mandatory stage 3.

Mr. Chairman, thank you very much.

[The prepared statement of Mr. Priebe appears on p. 263.]

Mr. OBERSTAR. Thank you.

I appreciate your testimony and particularly your touching on all the key elements that are factors in the development of a noise policy or factors that must be taken into consideration by policymakers.

Your very high, advanced billing by Chairman Ford was borne out by your testimony.

Commissioner Hubbard?

Mr. FORD. Mr. Chairman, I have just received word that Chairman Dingell will be unable to join us. In his absence, I would like to introduce Commissioner Susan Hubbard to the committee. She serves as County Representative for the Cities of Dearborn and Dearborn Heights.

Ms. Hubbard is a former City Councilwoman. Currently, she is the chairperson for the County Commission's Special Task Force on Aircraft Noise, which will be releasing its report in December. We will do what we can to make sure that the committee members are made aware of what it is they conclude after their thorough study.

Ms. Hubbard will be speaking on behalf of the communities she represents and as a member of the legislative body for the County of Wayne, which includes Detroit and all of its empire.

Mr. OBERSTAR. Thank you very much for those introductory remarks. They certainly follow on very high praise from Chairman Dingell in advance of this hearing. We are very much looking forward to your testimony.

Ms. HUBBARD. Thank you, Mr. Chairman.

I would first like to begin by thanking Congressmen Ford and Dingell for inviting me here this afternoon to share with you some of the concerns from the people of my District who have been affected greatly by recent changes in flight patterns.

I have submitted for your information written testimony, and therefore, I will keep my remarks very brief. I would just like to say at this very moment, as I sit here, my office telephone is ringing off the hook with complaints from people in my District due to a unilateral FAA change that was imposed last November concerning flight pattern arrival and departures.

I would just like to begin by stating that, imagine the recent article that stated that noise causes stress and hearing loss above 90 decibels. The same article cites a jet taking off as creating a 140 decibel reading.

So, if you can imagine levels above 90 decibels going on almost repeatedly for eight hours a day, that is what the people in my District are experiencing.

Imagine a residential community with high property values, admired for its tranquility and stability, waking up one November morning without warning to the sound of roaring jets at a 140-decibel level, because the FAA decided it was time to change flight patterns.

What I have submitted to you are several quotes from people in my District whose lives have been very dramatically changed, and for the worst, since the FAA changes the flight tracks so the planes are now taking off over this—what was once a very tranquil and quiet community.

But I would just like to read you one quote from letters I have received that exemplifies most of them:

> When we made a decision to purchase our home, it was with great deliberation and attention paid to the quiet of the neighborhood, and we paid a premium for this.

Now, suddenly, our tranquility has been shattered by a few bureaucrats without regard to the impact it would have on its constituents' daily lives. We will probably be forced to sell the homes we worked so hard for, to obtain what we had as recently as this past November, a quiet and peaceful home.

I sat here earlier today listening to the testimony from the Delegation from New Jersey, and I am here to tell you it is no different in Michigan. It is a very extreme problem. People are putting their homes up for sale. This change has affected what I would consider to be one of Michigan's most finest residential communities, and it is really devastating this community, and I am here to deliver that message to you on behalf of the people I represent, and to urge this body to pass some type of national policy that would allow—would afford—some type of procedural due process notice to these people before such a drastic change is made that affects their lives so dearly.

We are talking about people who have been living in this residential community for years who never experienced any noise—in fact, that is why they moved and bought that house, was for its tranquil neighborhood.

So, I really urge you to look seriously into the possibility of requiring the FAA to hold some type of hearings before any drastic changes are made in departure and arrival patterns.

And I thank you all very much for your time.

[The prepared statement of Ms. Hubbard appears on p. 173.]

Mr. OBERSTAR. Thank you very much, Commissioner Hubbard, we appreciate your testimony on those very well-selected comments from your constituents. Some of them are very graphic. They present the issue very forcefully.

Ms. HUBBARD. Thank you.

Mr. OBERSTAR. Thank you.

Mr. FORD. Mr. Chairman, on behalf of both Chairman Dingell and myself, I would like to introduce the next speaker, Edward Mc Namara, who is the Chief Executive of Wayne County, the fourth largest county in the United States. It should be noted, while we talk about the Detroit Airport, it is not in Detroit—in some people's view, it is not even near Detroit, depending on where you live and how far you have to drive to get there, but Ed McNamara is the County Executive, presiding over 2.3 million residents in that county, and also operating, amongst other things, the airport, which is really a county facility. It is not a Detroit facility at all, except to the extent people who live in Detroit live in the county.

He served for eight terms as the Mayor of Livonia. You can see we have a lot of Mayors here representing the two largest cities in my District. I just asked him if he saw the Good Morning America program this morning. They grabbed Saddam Hussein's limousine in Livonia, Michigan yesterday, where it was being repaired.

So, Livonia, in my District, is doing its share to toughen things up for the butcher of the Middle East.

Executive McNamara is widely credited for turning around a very difficult financial situation in our county, and you can understand that produces additional pressures to encourage development in every way possible, and I have to say he has been very cooperative with our offices and with the our local elected officials. I wanted to say to the committee that John and I asked for coopera-

tion from the FAA, and so far, they have been forthcoming in coming out to our area and meeting with the local officials, including the people operating the airport. They have attempted to inform them what the problems are from their perspective and what they might be able to do. Perhaps the County Executive can elaborate on that.

We have no complaint about the cooperation we have been getting recently from the FAA once the two Congressional offices brought our concerns to their attention. Thank you.

Mr. OBERSTAR. Those are two very powerful Congressional offices that ought to get the attention of that agency.

Mr. FORD. Thank you.

Mr. MCNAMARA. In fact, Mr. Chairman, we did have financial problems, and God sent us Congressman Ford and Congressman Dingell, and we have no more problems.

Mr. Chairman, members of the Aviation Subcommittee, I am Wayne County Executive Ed McNamara, and I represent over 2 million people in the metropolitan Detroit area.

I am delighted to be here in front of this prestigious committee on a subject that is so timely and is of such national importance, but more importantly, because it so greatly affects the quality of lives of the people of Wayne County, whom I was elected to protect and serve. We are on the cutting edge of noise as a problem, but also on how to responsibly resolve those problems.

I know this committee has broad concerns regarding Federal aviation noise policy, but I intend to focus mostly on one issue which this committee indicated is of particular concern, and that is the need for changes in procedures or standards for Federal regulation of air space, including the pattern of operations for the air traffic control system, in order to take better account of environmental effects of air space changes.

As you know, airplane noise is a complicated and controversial issue. This is especially true in Wayne County. We were transformed from an airport which was working diligently over the last few years with strong public support on some manageable noise problems, to an airport with noise problems so serious that our future will now depend on a referendum vote this November.

The FAA changed our flight tracks and departure and arrival policies. They explain that they worked internally for 2.5 years prior to making the change, and that it was designed to dramatically improve a very unsafe air space and reduce workload on a chronically understaffed operation. Everyone is for safer airspace, and I truly believe the changes have helped in that regard.

Unfortunately, this change occurred just one month after we completed a two-year noise study which cost hundreds of thousands of dollars and involved hours and hours of labor by community leaders. Although the FAA was involved in our noise study, we were not cognizant of any changes in air space under 5,000 feet that would create any significant noise impact.

That was just 10 months ago. And although we are still suffering the effects of noise, we have hope. There is hope because we ourselves, Wayne County, as an airport operator, decided to use every technical, legal and political resource available to combat the noise.

As a result, we are now involved in an unprecedented process with the FAA to solve the problem. It would be unfair for me to criticize the FAA without telling you the rest of the story. My optimism may be premature because we haven't quite put our hands on the antidote to the noise potion, but we expect to have it by December of this year.

I am here to tell you something that few people believe about the FAA. The FAA does care about noise when you make them care. Metro Airport is living proof of that. But you have to be well prepared and ready to work with them.

Before going any further, I want you to know the FAA has been responsive since last March. Late in the spring, they instituted a full-time preferential south flow for departing aircraft, which means aircraft depart over densely populated areas north of the airport only approximately 30 percent of the time. This has been very helpful, but we still need relief on the northern departures.

I want to explain today how we could have avoided this whole mess. I will suggest a better way to address the FAA's safety and traffic needs without trading our environment or jeopardizing billions of dollars of economic growth in an economically disadvantaged area.

Wayne County Airport first handled commercial carrier service over 50 years ago, in 1939. We know this because we just found the last piece of luggage lost on that flight.

The 1940s saw Metro Airport operate as a U.S. Army base for bombers going to Europe. As a result, some hangars and runways were built.

In the late fifties, Wayne County's first serious investment in the amount of $10.4 million started construction of an existing main terminal, one 10,500-foot runway, a hotel and a restaurant.

The sixties and early seventies were marked by tremendous economic growth for the Detroit area, but for a variety of reasons, actual airport development fell behind. There was steady growth, but it was slow. The County was partly to blame. The airport was operated by an unaccountable political body that didn't have the foresight to invest in airport growth. Finally, in 1982, Wayne County voters adopted a new charter changing its government into a strong executive form.

In 1984, Republic Airline designed Metro Airport as a hub, and for the first time, the airport's future seemed secure. But of course, things are rarely what they seem. We held our breath throughout 1986 as Northwest merged with Republic, causing tremendous uncertainty as to Metro's future, but we breathed a collective sigh of relief as Northwest ratifies its commitment to Wayne County. With this, we started down the long road of updating our master plan and performing a Part 150 Noise Study.

Our hopes were raised by a 1986 FAA Capacity Enhancement Task Force report which explained that Metro's status as a pacing airport required that capacity be enhanced to promote safety and prevent delays.

But once again, our hopes were chilled by fears as Northwest became the target of hostile takeovers which threatened to bankrupt the company, bleeding it of the capital necessary to commit to expansion.

Through a combination of good luck and hardball negotiations lead by this Congress, we ended up with a better Northwest Airlines under enlightened ownership.

Modernization was back on track. So, in 1989, we started the design process for a new $1 billion terminal and completed our master plan at a cost of $1 million. We also completed our environmental impact statement and the Part 150 Noise Abatement Plan in October 1989. We were very encouraged about the future.

For the first time in 50 years, we had a combination of stable government and airlines all poised for growth with strong public support. In fact, as part of our usual polling, we polled Wayne County voters in October 1989, and over 65 percent supported expansion. Of those polled, 43 percent felt the single biggest problem facing the airport was parking availability. Only 2 percent of the respondents felt airport noise was a problem. But all of this was about to change.

D-Day, November 16, 1989. That is the day the FAA changed flight tracks and profiles for all aircraft operating at Metro Airport. Since the changes occurred in the dead of winter when windows were closed, the noise impact was noticeable only by a few people, primarily in the densely-populated residential areas north of the airport, particularly in Dearborn, Michigan.

You are aware that Dearborn, Michigan is represented in Congress by the Honorable John D. Dingell. The airport itself is in the District of the Honorable William D. Ford. Both have been strong advocates of modernizing Metro Airport.

Things only got worse as time went on. The Memorial Day weekend was really the first time people were at home for extended periods of time with their windows open. Because of the winds, the planes departed in a northerly flow from Friday through Monday of that weekend. People with charged emotions became ballistic. This was new to them. And it was happening over some of the most affluent and historic neighborhoods in Wayne County.

Prior to the November 16, 1989 change, aircraft departing to the north from Metro would climb to 1,000 feet, take a hard turn to align themselves over a major freeway, and then slowly climb to 3,000 feet.

Once they got over the Rouge Industrial Complex or Detroit River to the east, or rural farm land to the west, they would then thrust up to the appropriate cruising altitude. There would be occasional deviations, but for the most part, aircraft would be over rural or industrial non-noise-sensitive areas. Although we had some problems along the freeway, they were manageable.

Under the new scheme, pilots take their foot off the brake, put the engine in full thrust and keep thrusting straight out until they reach 10–15,000 feet. The whole time the engines are pointed down at homes in some of our most affluent and densely-populated neighborhoods. No longer do aircraft follow industrial or open non-residential flight tracks.

The consequences of this action have been as you could expect. Citizen outrage against the airport flourished as far as 12 miles from the airport. A recent poll confirms this. Whereas one year ago, only 2 percent of Wayne County residents felt noise was the

most important problem at the airport, that has now multiplied by 10 to nearly 20 percent.

And instead of 65 percent of all Wayne County residents supporting airport modernization, we have lost 20 points with only 45 percent of all residents favoring modernization today.

The sole cause for this drop in support for the airport was the noise created by this change. There has been no appreciable increase in the number of flights since last year. The only things which have changed are the flight tracks and profiles.

I decided that Wayne County would no longer be defensive about noise problems but that as an airport operator, we must be proactive about mitigating noise. I named one of my top staff members, a non-airport person, as "Noise Czar" and gave him carte blanche. He immediately assembled a team of leading legal, technical and air traffic experts from across the Nation to get facts and assess our options. They set upon two courses of action:

First, review and recommend everything we could do as an operator to reduce aircraft noise, including activity use restrictions like a local stage II phaseout and non-addition rule, night noise restrictions, et cetera.

The second course had to include some relief from the FAA. When my Noise Czar first met with the FAA, we were skeptical about our chances. After a series of meetings, regional officers finally acknowledged that changes could be made, but that it would take up to two years to study it. We knew we didn't have two years, and after extensive and very delicate communication, to their credit, the FAA began to realize that. Little did we know, though, that time was running out.

We were working hard, but so were the residents of Dearborn who were impacted by noise from the FAA change. They organized a group called Citizens Against Aircraft Noise and started and completed a 21,000-signature petition drive pursuant to a little-known wrinkle in Michigan bond law to seek a referendum on a $100 million bond issue. These bonds don't involve one tax dollar.

They are airport revenue bonds which are paid by the airlines, they are only issued under the name of the county to make them more attractive as tax-free bonds. The money is to be spent on a parking structure, storm water management control devices, design and property purchase for a fourth runway, and noise berms and noise monitoring equipment.

We are seven weeks away from that election and we are working hard on the noise problem. Just 10 days ago, the FAA took an unprecedented step and announced its willingness to set up a working group to review last year's changes for possible revisions to reduce noise.

It is unprecedented in that it is like SWAT team. It consists of four FAA air traffic control experts, the National Director of Flight Support Services for Northwest Airlines and Wayne County's Noise Czar from my office.

Furthermore, they are moving faster in that they met for two days last week and will meet regularly to finish no later than December 1, 1990 with recommendations to mitigate noise. They are approaching the problem with no predisposition or prejudices and all options are being studied. The FAA hasn't done this anywhere

in the Nation and we appreciate and applaud their willingness to subject themselves to this process.

If this approach works, we think every other noise-impacted airport will seek this SWAT team approach. Until now, these reviews have taken at least two years. We are going to do it in nine weeks. We truly are on the cutting edge of solving noise problems.

In addition, we are on the verge of announcing our own noise plan in which we promise to put a cap on noise from the airport. We are confident that through aggressive management, we can guarantee that the noise generated by the airport activity will never be worse than it is today, and in fact will only get immediately better in an incremental and measurable way.

This cap may be achieved through a variable combination of activity use restrictions, predictably involving expedited Stage II phaseout, Stage II non-addition, restrictions on engine run-up as well as other measures. Although these actions may anger the airlines, Department of Transportation or the FAA, we believe we have no choice but to protect ourselves.

There are two very clear reasons why we feel this way:

First, the unbridled ability of the FAA to inflict air space changes that are so injurious to the quality of life of our citizens and ultimately the economic vitality of the region represents such an unfair imbalance of power that results in a "battle-stations" mentality-induced paralysis leaving our communities facing the double jeopardy of unbearable noise and a strangled economy. Our noise plan will hopefully prevent such consequences.

The second reason that Wayne County has to devise its own noise plan is plain and simple: The Federal Government hasn't. The lack of an acceptable national strategy on noise, addressing issues such as Stage II phaseout or non-addition, nighttime restrictions, or even procedures regulating air traffic control changes so as to include those who will have to live with the consequences before suffering them, leaves every airport operator to fend for themselves.

There is a better way. I urge this committee to move towards a national policy which, at a minimum, must do the following things:

First, regulate the FAA to prevent changes in air traffic control under an altitude of 10,000 feet without appropriate environmental assessments.

Second, the FAA must commit to strategically plan and maintain flight tracks for the long term to allow communities to effectively plan land uses consistent with air traffic.

Next, Congress has to legislate an expedited Stage II phase out/non-addition rule with incentives for airlines which already teeter too closely toward economic failure.

Mr. OBERSTAR. Mr. McNamara, I have to interrupt you. We are down to four minutes on a recorded vote.

Mr. MCNAMARA. I think you got my drift.

Mr. OBERSTAR. We will have to break and return at 2:00. There are a number of questions.

Mr. FORD. Mr. Chairman, Mr. McNamara has a statement. I ask unanimous consent that his entire statement be included in the record contemporaneous with his testimony.

Mr. OBERSTAR. Without objection, so ordered.

[The prepared statement of Mr. McNamara appears on p. 232.]

Mr. OBERSTAR. I invite the members of the panel to return at 2:00. I hoped to return earlier, but I have to attend a budget meeting. I will be back about 2:00. We would like to pose some questions.

[Whereupon, at 12:50 p.m., the subcommittee recessed, to reconvene at 2:00 p.m., the same day.]

AFTERNOON SESSION

Mr. OBERSTAR. Subcommittee will resume its sitting.

Mr. McNamara, we have included your entire statement in the record. Though you did not conclude reading the document in its entirety, I did read your remarks in advance, in fact, of your presentation, so I do know what you wanted to share with us.

Mr. Amann, do you have something further to add?

Mr. AMANN. No, simply here as a sidekick to Mr. McNamara.

Mr. MCNAMARA. He is the noise czar, Mr. Chairman. We picked the nosiest guy in the office and appointed him noise czar.

Mr. OBERSTAR. The first question I have is, what involvement did the FAA have with local government, with the airport authority, with the county, with the city or the cities involved, in its change in air traffic control and flight patterns which Commissioner Hubbard reported so graphically on in her statement.

The letters you received from constituents certainly say it from the heart and you expressed those very well. Can you describe the degree of involvement and participation with the FAA in—what struck me was the county had undertaken this very long two-and-a-half-year study, obviously at some considerable expense on your part.

Meanwhile, the FAA was on a parallel path doing its own study and analysis and they announced their plan which seems to me from your testimony to have come as a great surprise and certainly came as a great surprise to those residents in the area who Commissioner Hubbard pointed out were very dismayed, all of a sudden on a Memorial Day weekend to find their life disrupted.

Mr. MCNAMARA. The plan was briefly discussed or at least explained to some of our people at the airport who really took it rather lightly. They did not assume it meant that much to us.

In other words, it was not a case of a joint program that the two of us worked on. It was a unilateral decision on the part of the FAA to do what they did. And, of course, they did it on November 16th, 1989, but because of the fact homes were sealed up through the winter, the problem was just not brought out until the Memorial Day weekend when citizens began bringing their problem to our attention.

And at that time initially, we went to the FAA and said there haven't been any drastic changes and we in turn told the citizens things were not that different, but the more citizen complaints we got, the more we realized things were different and it was pretty much done unilaterally.

Mr. OBERSTAR. With no prior consultation?

Mr. MCNAMARA. No, consultation, only that the plan was presented.

Mr. OBERSTAR. But, FAA was aware the county was underway with its own study?

Mr. MCNAMARA. The noise 150 study, yes.

Mr. OBERSTAR. Was that a part 150 study?

Mr. MCNAMARA. Part 150.

Mr. OBERSTAR. So you would think the FAA would say we are doing the same thing over on our side. They didn't give you any indication to that?

Mr. MCNAMARA. To our knowledge, none.

Mr. PRIEBE. Mr. Chairman, I participated in Taylor's Representative to the Policy Committee of the part 150 and attended every single meeting there where FAA members that were part of the 150 study and it was never mentioned by FAA to the committees served on that they were looking to these changes.

Mr. OBERSTAR. What kind of confidence does that give you to the degree of participation or coordination or cooperation in the future?

Mr. MCNAMARA. It is concerning. I think when you realize proposition 140 out in California and what is happening down in Oklahoma with these elected officials being confined to a short term, I think what it drives home is we are developing to have a nation of super bureaucrats dictating to us and this is just a prime example of that.

We accept the fact that safety is important and we can do a lot of things in the name of safety, and we think that is in effect what has happened here. It made their job a little easier to do what they did and once they do it, I think their response—and after we left for the break, we met several people from New Jersey who said do not believe the FAA; they lie; they cheat; they steal. They are evil people, but they have had a lot more experience with them than we have.

We still have sufficient faith to believe that on December 1, 1990, the FAA is going to come forth and present a plan that we are going to be able to live with.

Mr. OBERSTAR. Mayor Priebe, you cited as a first consideration in development after policy noise, the issue of safety.

Mr. PRIEBE. Yes.

Mr. OBERSTAR. Safety must dominate—and I appreciate that thoughtfulness on your part and your perception that safety is critical. What safety factors dictated the change in flight tracks and flight profiles for metro airport?

Mr. PRIEBE. I have never actually seen any FAA workpapers or anything, but it is my understanding they had numerous near misses several years running, as recently as eight, last September. And the whole issue becomes a little bit complicated because there are several airports in the region, and apparently in an effort to get the larger faster aircraft to a higher altitude quicker, they chose to undertake this particular change.

And whether in fact that is valid or not, I don't know, and I doubt that any of us at this table know.

Mr. OBERSTAR. Commissioner Hubbard, what role do you believe land use planning should play in minimizing encroachment upon airports and the noise footprint of approach and take-off.

Ms. HUBBARD. Mr. Chairman, I think it could be in fact a tool for noise mitigation. I think the State of Minnesota has adopted a sort of zoning approach to nose abatement, so I think it is one method that could be utilized to help abate noise.

However, I think the biggest problem we all face right now with noise are the older jets, the DC–9's and the 727's, Stage II aircraft. They have got to go, and I think that seems to be the major problem right now. The 757's and the air bus, the new aircraft are not making—are not creating the noise problem. It is mainly the Stage II aircraft and I think going back to your organization question, it is—you know, it could play a part in abating noise.

However, I haven't heard too much about it yet so I just know the State of Minnesota has adopted that type of approach to abating noise.

Mr. OBERSTAR. Thank you. Mr. McNamara, what land use zoning statutes are applicable for the county, and how are they applied in the matter of the airport and its increasing growth as a hub?

Mr. MCNAMARA. Land use planning is a function of local government, cities, townships.

Mr. OBERSTAR. The county doesn't have the zoning authority?

Mr. MCNAMARA. No, we do not. We have a check on township zoning, but it is almost ministerial. It is pretty much a local operation.

But, zoning is extremely important to us. We have an economic development department in the county that has been very, very successful, probably the greatest source of economic development in the county of Wayne is land associated with the airport.

Presently there is a tremendous number of vacant acreage around there. And, of course, if you designate a piece of property for residential purposes and the homes are constructed, and then you change the pattern without notice, that is a terrible injustice to that community.

In other words, if we know that planes are going to be following a certain pattern, then in that pattern area, we can make sure that industrial and other kinds of uses take place.

Mr. OBERSTAR. Now, the City of Detroit, the surrounding communities, and the County of Wayne, all were pretty excited, as I recall, about Northwest Airlines, after it acquired Republic, designating Detroit as a hub when airlines moved to the hub and spoke system.

Did you have any idea what that would mean besides the economic impact?

Did somebody say designating Detroit as a northwest hub will also mean in addition to a hundred million dollars of economic impact, more aircraft, more take-offs and landings, more noise, and more safety problems?

Mr. MCNAMARA. We don't really think more noise is going to be a serious problem.

Mr. OBERSTAR. Did anyone ever raise that issue in that way?

Mr. MCNAMARA. No. Again, if I could go back.

Mr. OBERSTAR. FAA didn't tap you on the shoulder and say, hey, fellows, this is something you ought to be thinking about?

Mr. MCNAMARA. I think we were accepting the noise. We had gotten used to it until the patterns got changed.

In other words, as I mentioned in my testimony a few months before we took a poll, 2 percent of the people polled said noise was a major problem. Forty percent said parking was the major problem.

When the FAA changed the flight patterns, that figure went from 2 percent to 20 percent. The figure of 65 percent supporting the development of the airport went down to 45 percent, and there were no appreciable increase in flights. So the problem was the FAA's unilateral change of those flight patterns and flight proliferation.

Mr. OBERSTAR. Thank you. Mr. Clinger?

Mr. CLINGER. Thank all of you for your testimony here today. I can be very sympathetic to the problem you are faced with. Even now I come from a rural area. I do live here in Washington, in Alexandria, so I can set my watch by when flight operations start at National Airport, 7:00 a.m.

With regard to that, Mr. McNamara, you suggested the development of the federal policy on airports would pre-empt certain activities, presumably related to noise, and would apply in effect to all airports.

I think there is a need for some uniformity. My only question is some of the airports I represent don't really have a noise problem. They are out in the boonies, as it were, and should we preclude the use of some of the older aircraft in smaller more rural, regional airports and take away an opportunity for the computer airlines to make most effective use of their aircraft?

Mr. MCNAMARA. I think a couple problems come up. Certainly that remote airport was an advantage over an airport that does have a noise problem, so it is going to get an advantage relative to its usage. I think the other thing is if you start allowing all Stage II's to go into your remote airport, you are going to cause a problem if its only with the chickens and the cows because of the increased noise that is going to be created by all of those Stage II's being shifted from New Jersey and Detroit Metro into your particular airport that is more remote.

Mr. CLINGER. Okay. Thank you. Thank you, Mr. Chairman.

Mr. OBERSTAR. We have another vote in progress on the House Floor. We will have to recess and come back, but I think we have played on your patience long enough and we thank this panel very much for your participation. There may be additional questions we would like to submit in writing and have your response.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting.

We will proceed with the next panel, Mr. Robert Innocenzi, Deputy Commission of New Jersey Department of Transportation, and a long list of associates. Please come to the witness table.

I know that there are many witnesses who have travel plans and deadlines to meet. We are going to do our best to get to all witnesses in the order in which we have them listed because all preceding witnesses have, all the Members testifying have travel plans based on their order on the witness schedule. We have no control, as I said earlier, over what happens on the House Floor. We just try to proceed as rapidly as we can.

Mr. CANTONI. Mr. Chairman, may I interrupt?

Mr. OBERSTAR. Please use the microphone.

Mr. CANTONI. I am Craig Cantoni, the President of the New Jersey Coalition Against Aircraft Noise. We met in your office in April. You gave us a lot of your gracious time. Our plan for today, we want to see if it fits your needs, is to have Mr. Innocenzi speak first. He represents the State of New Jersey.

We have an elected official here, Assemblywoman Maureen Ogden. I would suggest she speaks next.

The rest of this panel, in the interest of time, we have divided it up to have two speakers. I would speak for about 15 minutes. Our attorney would speak for five minutes.

As I understood it, we had 20 minutes allotted to the coalition. Does that fit okay to you?

Mr. OBERSTAR. Twenty minutes for the panel.

Mr. CANTONI. There has been a misunderstanding then.

Mr. OBERSTAR. Under the circumstances, we would appreciate abbreviating as much as you can your oral testimony. Whatever documents you wish to be submitted will be included in the record in full. Twenty minutes means half an hour. We are going to have more votes yet this afternoon.

Mr. CANTONI. That is why I checked with you. Thank you.

Mr. OBERSTAR. Thank you. I appreciate all of you participating here. We are anxious to hear your testimony. We know it is significant. We look forward to hearing it.

Mr. Innocenzi, please begin.

TESTIMONY OF ROBERT A. INNOCENZI, DEPUTY COMMISSIONER, NEW JERSEY DEPARTMENT OF TRANSPORTATION; CRAIG CANTONI, PRESIDENT, NEW JERSEY COALITION AGAINST AIRCRAFT NOISE; HON. MAUREEN OGDEN, ASSEMBLYWOMAN, 22D DISTRICT, GENERAL ASSEMBLY OF NEW JERSEY; JULIETE COZZI, MONMOUTH ORGANIZATION AGAINST AIRCRAFT NOISE; RODNEY RUTH, PRESIDENT, CITIZENS' AIR RIGHTS; PATRICK RUSSELL, ESQ., LEGAL COUNSEL, NEW JERSEY COALITION AGAINST AIRCRAFT NOISE; GEORGE BROWN, COCHAIRMAN, COALITION AGAINST AIRCRAFT NOISE: PAUL LACORTE, CHAIRMAN, MAYOR'S COMMITTEE ON AIRPLANE NOISE; AND SUSAN STAPLES, GRASS ROOTS

Mr. INNOCENZI. Thank you. I want to thank you for the opportunity of testifying on a problem that not only affects the peace and quiet of many communities in New Jersey but also threatens the health and well-being of millions of Americans nationwide.

On behalf of Governor Jim Florio and the State of New Jersey, I would like to join with the many citizens of New Jersey seeking relief from aircraft noise.

Over seven million people in the U.S. are impacted by aircraft noise. Recent studies show that aircraft, railroad and highway traffic noise is a hindrance to 6.5 million people during conversations, 50 million people trying to sleep and 81 million people trying to relax. The Federal Aviation Administration (FAA) estimates that 3.2 million people live in areas that are incompatible for residential use because of aircraft noise.

Noise of this nature is not only a nuisance; it can be a health threat. EPA studies have shown noise as an important cause of physical and psychological stress. In an economic sense, noise can also lower real estate values as the affected areas become less desirable as places to live.

Mr. Chairman, for the last three years, thousands of our state's citizens have had to endure excessive amounts of aircraft noise as a result of the Federal Aviation Administration's expanded East Coast plan. In addition, for years resident close to Newark Airport and across from Philadelphia International Airport in South Jersey have faced constant high noise levels.

New Jersey is concerned that environmental needs had no place in the decisions to put the expanded East Coast plan in place. No environmental impact statement (EIS) was conducted despite the fact that the law requires an EIS when air routes will cause a significant change in activity over certain areas.

The citizens here can attest to the fact that significant changes in noise levels have occurred and that numerous studies have been conducted bolstering this fact.

When Governor Florio served here in Congress, he directed both Philadelphia Airport and the New York-New Jersey Port Authority to conduct noise studies at their airports. Limited noise studies were conducted and showed a high increase in noise at these airports. The noise studies, as well as two General Accounting Office (GAO) studies Governor Florio requested, pointed to a number of problems in this area that need to be addressed.

When Governor Florio was involved in the 1978 Quiet Communities Act, Congress clearly intended that the Department of Transportation share a responsibility with the Environmental Protection Agency for drafting noise standards and providing feedback on the environmental impact of routing decisions. When the Reagan administration abolished funding for EPA's Office of Noise Abatement and Control in 1981, environmental protection in this area was greatly decreased.

The Florio GAO report issued in late 1989 found that states had been unable to pick up where EPA left off and the result has been an absence of environmental protection.

Governor Florio has requested Secretary Skinner's personal attention to the issue of aircraft noise as a result of the expanded East Coast plan. At the time the plan was implemented, the FAA claimed that the plan would reduce flight delays and expand capacity. New Jersey is not convinced these goals have been met.

We believe that enough time has lapsed to evaluate if the plan did what it was intended to do. The Governor has called on the Federal Government to immediately undertake a detailed review by an independent expert of the expanded East Coast plan to determine whether the plan really did have a positive affect on air traffic delays and capacity. This examination should also include an in-depth study of the environmental impact of the changes in the flight patterns.

In addition, the Governor strongly supports the five-point plan recently announced by Senators Bradley and Lautenberg to address aircraft noise. The plan calls for greater use of airspace over coastal waters by commercial aircraft, the phasing out of stage 2 air-

craft operations, the development of a national aviation noise policy, and the requirement of an environmental assessment for major route changes.

Though the FAA has for many years expressed an interest in phasing out the noisier stage 2 aircraft, pressure from the industry and from OMB have squashed that effort. When Secretary Skinner issued his long-awaited national transportation policy earlier this year, it was made known that though his earlier drafts contained statements supporting this phase-out, this section was lost in the final document. The effort to phase out stage 2 has also been endorsed by the nation's governors.

Finally and most importantly, the FAA needs to be directed to be responsive to the concerns of the communities. Just recently, the FAA rerouted airplanes so they would not disturb the U.S. Open Tennis Tournament going on in New York. New Jersey have been asking for relief for three years with no significant results, but a request to change airplane routes for a tennis tournament was responded to in two days.

There are short-term management actions which the FAA Could take immediately to help our residents. For example, the FAA's existing procedures at Newark Airport take into consideration some of the noise impacts on communities by attempting to alternate the planes' flight patterns to avoid planes flying one after another over the same neighborhoods.

We understand that FAA regional staff has admitted to affected residents that this policy is not always adhered to and that controllers find it easier to continue to dispatch planes over the same, familiar routes.

This practice is unacceptable and the Governor has urged the FAA to beef up the quality control at Newark Airport so that residents can, at least for now, get the minimal relief the FAA included in their plans.

In closing, the state supports increased Federal funding to fully implement the Noise Control Act, and to allow governments to set stricter noise level controls than those set by the Federal Government. We would like to see EPA's role in noise control resurrected by establishing an EPA transportation noise program that includes periodic review of noise standards, enforcement and technical assistance to states and local governments.

It is critical to the well-being of our citizens and the future growth of the aviation industry that the Federal Government which is vested with the responsibility for the nation's airspace, take bold, responsive actions and identify new, creative ways to address the issue of aircraft noise.

Mr. Chairman, the State of New Jersey stands ready to assist you and the committee in your efforts.

Thank you.

Mr. OBERSTAR. Thank you, Mr. Innocenzi. We appreciate very much that statement and the insight into the New York U.S. Open Tournament.

Mr. OBERSTAR. Mr. Cantoni.

Mr. CANTONI. We will hear from Ms. Ogden first.

Ms. OGDEN. In the interest of time, since you have a copy of my testimony, I will try to hit the highlights here.

When I read of the interest deduction of the expanded East Coast plan on February 12, 1987—that is a date that now I remember as well as my husband's birthday and my son's birthday, can't forget it—I hadn't the slightest inkling that this would become a monumental issue for New Jersey because the FAA never disclosed the scope of the EECP as required by law.

Soon, in days and weeks afterwards, I started hearing from my many thousand constituents. Beyond that, I heard from those who live further away. The 14 towns in my district lie at least 15 miles west of Newark International Airport, and I soon began hearing from individuals who lived 40 and 50 miles away from the airport.

This issue has never been one in which we were dealing with the noise footprint of the airport itself. In fact, my home town of Millburn Township was an established suburb decades before commercial operations started at Newark Airport in the 1930s. This was not a case of people buying their homes at inexpensive prices next to an airport and then complaining about aircraft noise. It was exactly the reverse.

Like the people from Michigan said, some of the finest residential communities were being impacted. These were communities that existed before the airport began its commercial operation.

After convening a meeting of the angry residents in reaction to the EECP in the spring of 1987, it was decided that the most constructive thing that we could do was to set up a task force in which we involved all the key players. In other words, it was a bipartisan task force.

I invited our two U.S. Senators and all the way down through the congressional delegation, country representatives, mayors, state legislators and spokesmen for various citizens groups as well as representatives of the FAA, the port authority, the ATA and the Aviation Development Council, the New Jersey Department of Environmental Protection and the Governor's office. This was called, as I said, at my behest. We met about on a quarterly basis.

At the same time we were conducting a much smaller group. It was called the Executive Review Committee. That was asked for by Continental Air Lines. This consisted of eight people, representatives of Continental Air Lines, FAA, ATA, Development Council, port authority as well as a representative of the Governor's office, our DEP, myself and then cochairman of the Citizens' Group.

During the past three years these two groups have met on a regular basis. While the understanding of each other's problems have increased, the meetings have really only produced minor changes by the FAA in the flight patterns. The FAA was not willing to initiate major changes.

It has become very evident to all of us who have been involved in this issue that the only solution is a roll-back of the expanded East Coast plan. We found ourselves really dealing with two different but relates issues. One, of course, was the expanded East Coast plan. The other one was noisy aircraft.

My feeling was that dealing with the expanded East Coast plan was principally the responsibility of our congressional delegation because if the FAA would listen to anyone, it had to be our congressional representatives as opposed to the state representatives.

I felt the most effective role we could play at the state level would be to urge the port authority to begin a phase-out of the noisy stage 2 aircraft which operated out of the three airports, Newark, LaGuardia and JFK. My first step toward achieving this goal was to see a resolution pass the New Jersey assembly establishing an airport noise abatement study committee.

We held hearings throughout the state. The most important recommendation that we made was a phase-out of the noisy stage 2 aircraft from the port authority airports by the year 2000.

In the waning days of our last session which ended in January, this bill was narrowly defeated because of the lobbying by the FAA, the port authority and the airlines. They forecast absolutely incorrectly the loss of thousands of jobs in Newark. Incorrectly, I will say, because my bill provided an exemption if such an adverse economic impact in fact came to pass.

Let me briefly explain the key provisions of my bill. As of December 31, 1992, at least 20 percent of the aircraft using the three airports would meet stage 3 noise levels and each year thereafter at least an additional 20 percent of the aircraft using the airports would meet stage 3 noise levels. The stage 3 noise levels that we are talking about would be the FAA standard of the hush kit, reengining or the new stage 3 aircraft.

For your information, the operational level of stage 3 at the three airports is JFK, 69 percent, more than two thirds. LaGuardia at the low end of it with only about a quarter, 24 percent. And Newark in the middle with 41 percent.

My bill actually calls for all the aircraft to meet stage 3 by the end of 1996. But in effect, it really is the year 2000 because a further extension of three years could be given by the port authority for the airlines that showed that they had firm orders.

As I alluded to a few minutes ago, there is a temporary exemption in the bill beyond the year 2000 for any carriers for which the conversion to stage 3 would produce an adverse regional economic impact. There were objections not only, as I say, by the FAA and the port authority and the airlines, but also by some business and industry organizations who felt this would mean a loss of jobs.

It was in response to that concern that I put in the provision that there could be the exemption for the airlines that were not able to meet the goal financially, and they would be allowed a few years more.

As I sought votes on this bill and was attempting to deal with the issue of economic impact, I contacted several other airports and particularly San Francisco International, Logan, John Wayne International as well as some smaller ones, to learn what had happened when they had adopted regulations such as the ones we were proposing or very similar ones.

These three and other smaller airports responded that no jobs had been lost. In fact, several stated there had actually been an increase in both cargo and passenger flights.

The Members of this committee know that the European Economic Community is adopting a non-addition rule for stage 2 aircraft in November of this year and that the Nordic countries have already imposed operating restrictions that will require an all stage 3 fleet by the year 2000. It is clear that the noisy stage 2 air-

craft are not welcome in Europe, and it would be a sad state of affairs if we were to see them all being export from Europe to the U.S.

I set forth in my testimony the outline of what the Airport Operators Council International is calling for, which I think contains very good guidelines for the FAA. With the one strong point that I would like to make, which is that the airport operators must retain their current rights to require more stringent regulations if local noise conditions require them.

In conclusion, Mr. Chairman, last August the port authority adopted a non-addition rule for stage 2 aircraft between the hours of 12 midnight and 6 a.m., and this with a deadline of December 31, 1991. This was a good first step, but the port authority clearly needs to provide stronger leadership.

Our metropolitan area is unique with its tremendous number of aircraft operations and high population densities. Passengers and freight for Newark Airport are projected to double by the year 2000. Can you imagine what this will mean to the human beings living below these highways in the sky?

It is vital that this issue be addressed by the various levels of government with a sense of urgency. Other enlightened countries around us have charted their course. The mental and physical health of many Americans will be harmed if we do not. Proper environmental use of the airspace above our heads is every bit as important as the proper use of other natural resources such as land and water.

The FAA abandoned its responsibility to protect the environment and the human beings living below the highways of roaring planes as it caters to the airlines. The social contract between the government and the people has been broken as an acoustic Chernobyl has grown and spread over the State of New Jersey like a cancer.

I thank you, Mr. Chairman, other Members of your committee, for scheduling this and subsequent hearings, and appreciate the opportunity to testify before you.

[The prepared statement of Ms. Ogden appears on p. 253.]

Mr. OBERSTAR. Thank you very much for your thoughtful comments, and compliments on the bill you have introduced to move in that direction, noise free, by the year 2000.

Mr. Cantoni.

Mr. CANTONI. Thank you, Mr. Chairman.

I am a direct representative of the victims here. The victims have sent me to Washington, DC. I speak for thousands of victims, 220 communities, 18 counties, over 4,000 square miles of the Garden State, which is half the state.

There are 600,000 people in the New York metropolitan area who live in incompatible land use area. Six-hundred-thousand, it is larger than most congressional districts, if I am not mistaken. Those 600,000 people plus the 3.4 people who are under the new EECP routes certainly want stage 3 aircraft. They certainly want good land use planning.

But those two solutions are not solutions in the New York area. Stage 3 aircraft, when you have 700 to 800 of them coming over your house every day is not a solution. And if I could ask your forbearance, I want to play a 30-second tape. I think you will be able

to hear it. This tape is 25 nautical miles from an airport in an area that never had airplanes. This is a tape.

You will hear—in the near ground you will hear birds chirping. Those are birds close to the microphone. In the background you are going to hear a contest between an inbound jet 25 miles and a huge chain saw. A neighbor was running his chain saw. When you listen to this, I want you to imagine hearing this every minute of the day. I want you to imagine hearing it at 3:30 in the morning by a cargo jet, 4 o'clock in the morning, 4:30 in the morning, as I get, 25 miles.

[Tape played.]

Mr. CANTONI. The result of this, people are living with constant anger, constant stress. People have retreated inside their homes. We have an elderly woman in this audience who—her hobby was gardening—lived in the same home all her life, on a fixed income, has had to air condition that home, has retreated inside. We have people living in their basements like hermits, holed up in their homes like moles.

Personally, this issue has cost me about $50,000. Fifty-thousand dollars. I spent $30,000 in new landscaping when I moved into my new home. I can't sit outside anymore. There are workmen in my basement as we speak finishing my basement so I have a retreat.

I am a working-class individual who worked his way up. I am now a business executive, and I have to go retreat to my basement, living 18 miles from an airport. This is an injustice. The FAA has invaded our homes.

I am also a business executive with a very large chemicals natural resources company. I would be arrested for such violations of the environment. I do not understand why we have such a double standard in this country, why there is one industry that gets off scot-free.

The expense for smokestack scrubbers, emission controls on my factories is a higher percentage than the percent of stage 3 aircraft as a percentage of the total capitalization of the aircraft industry. I do not understand this double standard.

We have learned that protecting the environment is good business. We believe that polluters should pay for their pollution and not the victims. We do not understand why this industry gets off the hook.

The EECP must be rolled back. It is analogous to the *Exxon Valdez*. If Exxon came out and said, "We do not have to collect our oil or clean the beaches, but we are going to let that oil sit on those beaches," that is what we are hearing from the industry and the FAA.

I also want to say this. I am a conservative businessman. It is hard for me to say this but the FAA are a pack of liars. I was told that when I got involved with this issue. I discounted it. I didn't believe it. I experienced it firsthand. They are liars. They have lied to us, purposely misled us. I think it is the most undemocratic institution that I have ever seen.

I have lost faith in my government, so have the other people at this table. We thought the government by the people and for the people meant just that, and it didn't mean government by special interests, money lobbies and dictatorial agencies. That is what we have encountered.

I can't sleep at night. I go to work with bags under my eyes, 3:30 in the morning, 4 o'clock in the morning, 4:30 in the morning, with my windows closed and my air conditioning on. This is an injustice, gentlemen.

Thank you.

[The prepared statement of Mr. Cantoni appears on p. 142.]

Mr. RUSSELL. Thank you very much for giving us the opportunity to testify. It is greatly appreciated.

As you have heard from Craig, it is quite a moving statement of what people have to live with every day. The suggestions we have, to cut to the quick, with regard to the kinds of concerns you raised this morning when you were inquiring as to whether anyone was notified prior to the introduction of this plan in the State of New Jersey, these are the recommendations we have with regard to that.

The appropriate authorities and citations are in my comments, which I respectfully request be incorporated in the record.

Mr. OBERSTAR. Without objection, so ordered.

Mr. RUSSELL. Thank you.

There are three essential points we would like to recommend. One is the change in the form of notice for the Federal Aviation Administration with regard to a plan such as this. I have copies of the notice for the expanded east coast plan for the record if you so desire. They are basically indecipherable.

If we were not as fluent as we are right now, we wouldn't understand what is going on. Not only that, they were placed in the Federal Register. I understand all the public policy considerations for this for the expeditious movement of a regulatory agency. However, I think they no longer deserve that kind of courtesy.

What we recommend is to democraticize that process by having notice of a plan of a significant Federal action be disseminated widely and commonly through the media and to all relevant interest groups and people who live in the affected area.

As I said to you, in my remarks this is dealt with more extensively and we will be more than happy to submit a memorandum on any of these issues, as we have discussed with your staff prior to this meeting.

Second, we request a modification in the statute of limitations for bringing an action against the Federal Aviation Administration. As you probably know, it is 60 days after the final order or leave of the court if there is a reasonable excuse for not bringing it within those 60 days.

I respectfully understand the public policy considerations behind the short statute of limitations when approaching administrative agencies. But as I have said to you, with regard to notice, that courtesy should no longer, or that policy should no longer be extended.

We recommend a year statute of limitations so citizens can bring the action. In addition to that, in addition to allowing citizens to bring the action in terms of understanding what their problem is in hiring counsel, we would act as a deterrent to the FAA in their planning.

Two other recommendations I will leave out in the spirit of brevity.

Finally, I would like to recommend modifying the Equal Access to Justice Act, which would allow citizens to recover legal fees as it now stands only if they prevail, and the FAA May still be excused, if it is deemed unjust or they acted substantially correct, what we would like to do is give citizens parity in the Equal Access to Justice Act and remove the fact that they must prevail and leave judicial discretions and determine whether their cause is meritorious or just.

If you will bear with me, I would like to read some recommendations.

Mr. OBERSTAR. We are going to have to break at this point. We have 4 minutes remaining on this vote. We will vote and come back.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting.

Mr. Russell, you were in the midst of your statement.

Mr. RUSSELL. As I said to you before, in the spirit of brevity, I will read these recommendations we are going to advance. Perhaps you might have some questions for the citizens on the panel. We certainly hope you do.

We would like to respectfully submit to your attention the following recommendations and proposals: that this committee evaluate the adequacy of the FAA's 3,000-foot rule as a threshold above which air route and procedure changes do not require environmental assessment or impact statements.

We request that you review the adequacy of the LDN as a standard measure for determining cumulative exposure of individuals to noise, including aircraft noise.

Develop a standard of measurement of noise for areas remote from airports beyond the 65 LDN contour with low ambient noise levels.

Require state-of-the-art noise monitoring systems at all major metropolitan airports by 1995.

Modernize the American aircraft fleet. There shall be no exceptions to this rule. Commercial, private, military and all additions should meet stage 3 requirements. This need mandate no further additions or replacement of stage 2 aircraft. This is recognized internationally, as you know. It would also prevent dumping of European noise, polluting states to aircraft in the United States as has been expressed earlier here.

We recommend a national aircraft noise abatement trust fund in phasing out of stage 2, and with the implementation of stage 3 for aircraft, New Jersey can promote proposals that no citizen should have to pay the polluter directly or indirectly to have pollution removed from the environment. Therefore, nothing should be paid over to any plane manufacturer, owner or user as ransom to stop polluting. Rather, surcharges should be phased in over a short period of time and imposed on the users of stage 2 aircraft, particularly those users flying planes over heavily populated areas or those users flying in and out of very active airports, and certainly those users who fly over New Jersey.

The proceeds from these surcharges can be used for research and development of nonpolluting quiet aircraft. With technology so de-

veloped, new aircraft will provide the standard for future generations of airplanes as stage 3 should today.

The trust fund can also be used to lend money at market rates with deferred payment schedules to hard-luck airlines in lieu of temporary exemptions or waivers for meeting stage 3 implementation.

To the extent the government decides to assist industries in implementing technology to reduce noise pollution as well as ongoing pollution, technology to reduce noise pollution should be considered a desired step the government should seek to develop.

We also respectfully request that you consider the creation of a citizens' review board for each FAA region with the independence to report back to the appropriate congressional mechanism.

We also recommend that you reestablish the Environmental Protection Agency Office of Noise Abatement. It should be established at a level commensurate with current transportation noise problems and complaints.

We recommend you introduce or support legislation that will force airlines to spread flights throughout the day resulting in greater safety and less environmental degradation.

Under such a requirement, there would be less peak period for controllers, less pollution from circling aircraft or for those waiting in line for takeoff and less noise pollution because fewer lanes would be necessary. Planes could fly at higher altitudes and not require additional lanes, multilevel lanes to handle peak period volume. Such a policy can be effected either by mandate or material surcharging peak landings and takeoffs.

Wait ports are proposed by the Airline Pilots Association as a concept worthy of review by this committee. Wait ports is a proposal that has some significant support by airlines. Wait ports are large, strategically located airports to be constructed in remote rural areas as passenger switching points. The benefits would be significant.

We also respectfully request that you support any and all bills that require the rollback of the expanded East Coast plan as it relates to the metropolitan area. The quality of life in this nation depends on the quality of leadership. The quality of leadership depends upon a total commitment to principal public policy.

To the extent this chain of reasoning guides the foregoing proposals and recommendations, our environment will be protected and the common heritage of everyone in this room and nation will be enriched.

I hope all of you can maintain the conviction to carry these burdens forth. The delicate balance of our personal, family and community lives depends on you.

Thank you.

We hope you have some questions for the citizens.

[The prepared statement of Mr. Russell appears on p. 283.]

Mr. RUSSELL. We hope you have some questions for the citizens.

Mr. OBERSTAR. Yes, we have.

Ms. STAPLES. I am Susan Staples. Thank you, Mr. Chairman.

There may be some misunderstanding. I am here today representing New York and trying to speak for the rural remote areas that have been mentioned at times today.

I represent Ulsterites Fight Overflight Noise, a citizens group in Ulster County, New York. Our membership consists of over 1,000 people who have signed a petition asking that the FAA consider the low level of background noise in rural areas in the routing and altitude of flight paths.

Our group has worked very closely with the New Jersey panel that is here today. We would support all of their recommendations.

We, too, have been affected by the expanded East Coast plan. I think it is important to mention how noise impacts do affect the quality of life in rural areas, and in our case in particular.

Ulster County is about 90 miles north of New York. It is an area where people from the metropolitan region come to get away from noise. There is the Catskill Park and Forest Preserve, Mohonk Reserve and Minnewaska Park, as well as many very quiet, off-the-main-road locations where people have purchased second homes or simply chosen to live to be away from the noise of the metropolitan area.

Our quiet places are a natural resource and they are a valued commodity. What has happened since the expanded East Coast plan is we are losing our quiet places. They are no longer available for us or for the people of the metropolitan region who need a place that they can get away from noise and stress.

An example that I just think highlights some of the concerns I think having to do with FAA policy in this regard is Minnewaska Park. It is an area that the State of New York recently bought and has designated as a semi-wilderness area with its goal being to maintain it in its semi-wilderness state without any types of improvements. The irony of this is that it is now protected land but it does not have protected sky.

One of the arrival routes for Newark Airport was placed over Minnewaska State Park. As a result, you now have the experience of hiking three and a half miles off the road to get to a wilderness setting that has that special kind of quietness that is very unique to wilderness area only to hear this quietness bombarded by jets often as frequently as once every 5 or 10 minutes as they are traveling to Newark Airport. They are at about 5,000 feet above the person at the wilderness area at this point.

Now, in talking to the people at the Nashua control center in New Hampshire about this problem, we were told that their maps there did not identify this state-protected area. It is a quiet and extensive area. It is on the Shawangunk Ridge in south central Ulster County. They told us they had no way to identify environmentally sensitive areas.

Now, how can the FAA hope to try to minimize noise impacts if they have not even identified environmentaliy noise-sensitive areas? This we see as a major deficiency in the policy along with the fact that they do not take into consideration the low level of background noise in rural areas which makes the noise much, a given level of noise is much more intrusive because of that level of background noise. That should be factored into the formulas that evaluate noise impacts, and it is not currently.

In our experiences in trying to bring these problems to the attention of the FAA, we have encountered problems of another kind. We sent our petition to Admiral Bussey of the FAA in Washington.

Our response was from the Eastern region noise abatement office, and was a reiteration of FAA policy rather than an attempt to address our concern about environmental factors.

In addition, we were told that the flights in our area were 16–18,000 feet above sea level, when we have pilots who were able to tell us what the clearances were so that we know that these flights are at 7,000 feet by the time they reach the southern border of Ulster County.

Our citizens who call Eastern region noise abatement basically are given the same message. The message is that, one, nothing has changed; two, that nothing can be done about it; and three, "Aren't your reactions perhaps excessive?" This does not convey to the public a concern with taking noise abatement seriously.

In conclusion, projections for the mid Hudson area, which is just up from the metropolitan area, call for air traffic to double in the next 10 years. As the metropolitan area becomes increasingly crowded, both in the air and on the ground, the quiet places necessary for our health and well-being will be even more precious. Their protection will be possible only with an FAA that is more responsive to public concern and more environmentally accountable.

We are asking those in our government charged with protecting the public interest to call for an upgrading of FAA standards for noise evaluation and reduction in rural areas. Since it is not clear that the expanded East Coast plan has reduced delays at the metropolitan airports, we support a rollback of the plan in order to conduct the necessary environmental review and to explore the increased views of ocean airspace prior to its reinstitution.

Other directions essential for a more environmentally responsible policy are a change regarding the environmental assessment of changes in air traffic patterns above 3,000 feet in altitude and acceleration of the retirement of stage 2 aircraft to match the curtailment that Europe is instituting this year.

Thank you very much for your attention to these concerns.

[The prepared statement of Ms. Staples appears on p. 296.]

Mr. OBERSTAR. Thank you for that additional information and for the particular, for the reference to the forest area that somehow has been missed by the FAA. That is a very important factor.

Any other statements other panel members may wish to make?

Ms. COZZI. I think most of us from the different areas will submit our written statements.

Mr. OBERSTAR. They will be included in the record.

Mr. RUTH. Mr. Chairman, Rodney Ruth. I am just reading, if I may, one paragraph from a letter that I sent to you in your position as Chairman of the subcommittee.

One of the main functions of the FAA is to promote aviation. This they do very efficiently. However, there has to be an avenue of address for the private citizen, the homeowner, the family who may not wish or cannot relocate to escape such a situation. That avenue is Congress and the Subcommittee on Aviation.

The entire nation desperately needs a national policy to address this ever expanding problem. However, we need a national policy that would include complete representation for all parties involved, not just the dictatorial actions of a single Federal regulatory agency such as the FAA.

Thank you.

Mr. OBERSTAR. Thank you. I appreciate your statement.

Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

It is truly a very brief, very brief testimony. I would like to make one observation and then raise a point to leave with you, please.

I think each one of us had had precisely the same problem with the FAA. They have systematically lied to us, misinformed not only citizens and groups but, frankly, Congressmen and Senators. There has been, truly, a campaign of disinformation.

I have spent most of my business life in the Middle East. I must tell you now that I had more honest dealings with the Arabs than I ever did with the FAA. And by the way, I have been in Libya, Saudi Arabia, Egypt and Kuwait.

Having said that, let me make one point, sir. The FAA, when it implemented the EECP, indicated there were three prime objectives: to increase capacity, they were to reduce delays and they were to enhance safety.

The fact of the matter is, in the experience that they have had with the EECP in three years, we do know from the records that the traffic has been down. I believe the figure is about 20 percent. We know that the delays are up and it ranges anywhere from 111 percent to approximately 17 percent in Newark Airport.

I would ask this committee to consider what would. have happened had the traffic increased as they predicted and what will happen if they persist with this, this fallacy that the EECP is the solution to the problem for delays and capacity.

The fact is that if it doesn't work with capacity down, how on earth is it supposed to work with the capacity doubled? So that they have turned logic on its head. And I truly believe this committee should examine the FAA very carefully.

We have found, and I will just make one final point, we have found, for example, that they implement plans—and by the way, it took us months to discover this—they implement plans and they have no technology for plotting the tracks of the flights that they are routing over residential areas, any areas. They have no computer technology. They manually plot.

The fact of the matter is, when we report that there are problems, they say there are no problems. When we ask how do they know that, they say, "Well, we track complaints." They have one complaint number in New York, one complaint number. Clearly they are not getting the complaints.

Mr. Chairman, you have a renegade bureaucracy, and I urge you to examine it very carefully because we need your help, sir.

Mr. OBERSTAR. We are now at the outset of another vote. I would like to conclude this panel before we break for this vote.

You all, in each of your respective ways, have shed some light on the issue at hand and raised very serious questions, principally those of communication, sharing of information, of cooperation, of inclusiveness on the part of the FAA.

Mr. Russell, you had some very clear-cut recommendations, one of which I am not quite sure you convinced me of, about the fact that given the current state of economics in aviation, I don't think

I want to be lending any money out of the aviation trust fund to some brethren in the aviation community.

Mr. RUSSELL. That would be in lieu of waivers and exemptions because we are trying to get the fleet up to stage 3 as fast as possible. I do agree with you.

Mr. OBERSTAR. Lending money out of the aviation trust fund to some of those folks today would not be very wise.

At any rate, the principal problem seems to be the FAA operates on its own, doesn't include the communities, doesn't include citizens, doesn't include state government, doesn't include county government. They just went ahead. It might be understandable if the principal purpose of the realignment was specifically for safety, specifically, exclusively for safety.

I think all of you can understand that there were some urgent reasons on safety grounds to realign the flight. That does not seem to be the purpose of the realignment of traffic patterns on the East Coast. It was done for other reasons.

What did the FAA tell you, if anything, about the reason for this realignment and why the plan could not be subject to public explanation, public input?

Mr. CANTONI. They misstated the National Environmental Policy Act. They misstated the 3,000-foot rule, public controversy rule of that Act.

First of all, they said the route changes were not below 3,000 feet. We have proof that they were, first of all.

Secondly, there was huge public controversy, as you have seen all day, Mr. Chairman. And the FAA, to say that they did not know there would be public controversy is one of their bold-face lies.

They have been changing air routes throughout their history. They knew for sure there would be public controversy. As a matter of fact, the implemented phase 1 of the EECP. There was massive public controversy and they went ahead and implemented phase 2.

Mr. OBERSTAR. What do you understand, though, as a collective group, were the reasons for the FAA announcement of this Expanded East Coast plan?

Ms. COZZI. It was to increase capacity at the New York airports. The major one was to decrease delays, aircraft delays from the airports.

Mr. OBERSTAR. Capacity and delays.

At the time, did any of you have any indication this would result in an increase in noise impact on any of your communities?

Ms. COZZI. No.

Mr. OBERSTAR. Was there any statement by the FAA that this change in plan would result in an increase in noise impact on communities who were not now receiving it?

Mr. RUSSELL. No.

Mr. OBERSTAR. In your judgment, did the expanded East Coast plan shift noise from other areas to New Jersey?

Mr. RUSSELL. No.

Ms. COZZI. It created new noise.

Mr. CANTONI. Mr. Chairman, let me clarify. The complaints to the FAA port authority from New Jersey outnumber complaints from New York 50 to one.

Ms. COZZI. It may have shifted some from New York from maybe Long Island or something.

Mr. OBERSTAR. Has there been documented an increase in air traffic into the airports in question that were to be affected by the capacity enhancement plan?

Mr. RUSSELL. Capacity is down according to the port authority bond statement, which we can submit for the record, if you like.

Mr. OBERSTAR. Some noise has been shifted from other areas to your area? If traffic isn't up, then some areas that were receiving noise before are not receiving it now, and your area is?

Ms. COZZI. They are routing the planes so they are noisier. They have layered the planes. The planes are lower in altitude. They are throttling up over our homes. They weren't doing that before.

Mr. OBERSTAR. The bill that we have reported out of the committee, the House has passed. We have referred to it earlier in the day, the Aviation Safety and Capacity Expansion Act. It includes a provision offered by Mr. Rinaldo, supported by the entire New Jersey delegation, requiring an environmental impact statement for the East Coast plan, the effect of which might be to make some changes in that plan.

Do all of you support that process, even though it might be a long term? It is not going to be done overnight.

Ms. COZZI. I think he put a six-month limit——

Mr. OBERSTAR. Right. It is going to take some months to do that.

Ms. COZZI. We support it because it requires the FAA to look at alternatives. That has never been done.

Mr. OBERSTAR. It requires the FAA to do what it should have done at the outset. If this was not an emergency or pure safety issue, there should have been public inclusion.

Mr. RUSSELL. Mr. Chairman, Senator Lautenberg requested a GAO report, which we have a copy of and would be more than happy to submit for the record. He studied midair crashes in the United States. Between 1986 and the end of 1988, there were 29 in the New York metropolitan area. In 1989, there were 37 near-midair crashes. On June 13 of this year, there were three.

So safety has become more of a problem during the course of the expanded East Coast plan. I know that the time-honored principle of correlation and applying causation doesn't hold. The simple fact of the matter is, since the EECP, it has been far more dangerous for us to fly near the metropolitan area.

Mr. OBERSTAR. Is there an altitude, a minimum altitude above which you believe that noise is not a problem?

Ms. COZZI. The issue is——

Mr. OBERSTAR. You talked about the 3,000 foot rule. Is there some altitude above that?

Ms. COZZI. If a plan is accelerating at 5,000 or 6,000 feet, it is very, very noisy. If it is at cruise altitude and it is coming over your house, it is not noisy.

Mr. OBERSTAR. Cruise altitude is different for different aircraft.

Ms. COZZI. It just depends on what the plane is doing, how much noise it is creating. So that just to set an altitude level wouldn't protect, I don't think, residents in all cases.

Mr. CANTONI. Mr. Chairman, I didn't want to get into a technical discussion here because people's eyes glaze over. I have become an

expert at something I can't make money off. I believe what we need to do is come up with a different measure that will answer your question. The measure consists of single events plus the difference between L–10 and L–90.

The FAA with their 65 LDN, as we have all heard, is a misleading measure. It is geared to close proximity to the airport. We have to factor in L–10 minus L–90. That will factor in the normal ambient sounds in neighborhoods. I think that is the way to attack it rather than through altitudes.

Mr. OBERSTAR. I have some other questions. I would like to yield to Mr. Clinger at this point.

Mr. CLINGER. Just briefly, the question of preemption. We are going to be debating here now and presumably next year on a national Federal noise policy. Is it your view that the Federal policy should in effect preempt local control or would you say that the local area should be able to have more stringent requirements if the Federal policy did not suit?

The argument against that, of course, is that that really, the airlines clearly would have serious problems with that because it would mean they could use some aircraft in some airports and not other aircraft in other airports.

What is your view?

Mr. CANTONI. I think a national policy would be so watered down because of the influence of the industry and because of the incestuous relationship between the FAA and that industry that I am opposed to Federal preemption. I think we still need the flexibility at the local level to influence the airport operators.

As a matter of fact, if you let the democratic process take place, the New York metropolitan airports under the port authority, Chicago and Los Angeles, if you let it run its course, I believe you will have a de facto national noise policy that will be in the best interest of the citizens. The airline industry is obviously opposed to that because it is in the best interest of the citizens.

Mr. RUSSELL. One other comment is that the Federal Government, of course, would assume liability.

Mr. OBERSTAR. If the Federal Government requires a phase-out of stage 2 aircraft, then in exchange, should there be any limitations on the authority of airports to affect stage 3 aircraft?

The question the carriers will ask is, where do the costs end? If we make this investment, if we re-engine an aircraft at the cost of $3.5 to $4 million and achieve stage 3, are we then going to be subject to further regulatory action that will cost additional money?

Mr. CANTONI. Let me answer this way. I think there has, that the industry has to pay a price for increased expansion, increased fares in a near monopolistic condition in some markets.

Mr. OBERSTAR. That is not the question.

Mr. CANTONI. I believe it is, Mr. Chairman.

Mr. OBERSTAR. The question is, if in legislation we should require by a date certain phase-out of stage 2, then should local airport authorities have further powers to limit stage 3 aircraft?

Mr. CANTONI. Yes, absolutely, because we do not believe traffic is going to remain constant. That is why I am trying to tie it into a traffic increase.

Mr. OBERSTAR. I want to be sure you understand my question and I want to be sure I understand your answer.

We will recess for this vote and continue with our next panel from Seattle.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting and continue with testimony from our colleague, John Miller, Representative from the First District of Washington. We will recognize our colleague to introduce members of the panel.

TESTIMONY OF HON. JOHN MILLER, A REPRESENTATIVE FROM THE STATE OF WASHINGTON; HON. JIM STREET, COUNCILMAN, SEATTLE CITY COUNCIL, SEATTLE, WASHINGTON; JEANETTE WILLIAMS, COCHAIR, AIRCRAFT NOISE GROUP, SEATTLE COMMUNITY COUNCIL FEDERATION; AND PAIGE MILLER, SECRETARY, PORT OF SEATTLE, ACCOMPANIED BY JOE SIMS, DIRECTOR OF PLANNING, SEATTLE-TACOMA INTERNATIONAL AIRPORT

Mr. MILLER of Washington. Thank you, Mr. Chairman.

First of all, I want to express my appreciation for the patience you and Vice Chairman Clinger have shown during this long day. More than that, I want to repeat publicly what I said to you on the Floor, and that is my appreciation for both of you tackling one heck of a noise problem. It is time to deal with the noise impact issue, and you are taking the lead.

In February of this year, the FAA—just to give you some background on how all of us from Washington State get to be here. In February of this year, the FAA implemented a new "four post" flight plan to deal with increasing delays and congestion at SEA-TAC International Airport. And the plan called for a number of additional flights over residential communities.

As a result, I received hundreds of phone calls and letters, and had hundreds of personal meetings on this; constituents all over my District concerned about air noise.

I wrote Secretary Skinner a couple of times urging an environmental impact statement. That has not been done. But the thing that came out of this that made the most impression—the biggest impression on me, here I had to explain to constituents living underneath the noise that the FAA, by law, does not have to consider noise impact in their decisions.

By FAA policy, not law, noise impact is considered, but even then only when jets are rerouted below 3,000 feet. And my constituents' ears, their interrupted sleep, their rattling windows tell me in no uncertain terms that departing aircraft make noise all the way up to 15,000 feet, five times greater than the FAA ceiling.

Now, in the Puget Sound area, we have not just waited upon the Federal Government. Puget Sounders crated a unique aircraft mediation process under the leadership of the Port of Seattle. The mediation process produced an air noise package for SEA-TAC Airport. The package includes an overall noise budget and restrictions on noisy stage 2 aircraft.

Not every Puget Sounder agrees with the mediation's first result—particularly some subjects that weren't reached, but the

mediation approach to the air noise problem has had considerable value.

Let me introduce this distinguished panel that is here with me. Sitting on my right, Mr. Chairman, is a former colleague of mine, former City Council—Seattle City Council member, Jeanette Williams. Jeanette cochairs the Seattle Community Council Federation's Aircraft Noise Group, the leading citizen activist group on the air noise problem in our area, and she has been dealing with this problem for years.

Sitting over here to my left, we have Paige Miller, who is the—a Commissioner for the Seattle Port. The Port operates the airport. The Port brought the noise mediation process together that I described. Paige has some very particular concerns that she is going to address about what the Senate is doing.

Sitting to my left, another—I guess you are not a former colleague—you got on after I left the Seattle City Council, but Councilman Jim Street, present member of the Seattle City Council, who is Chairman of the Council's Growth Policies and Regional Affairs Committee.

Before we get to the panel, let me just briefly describe a bill that I have introduced to address the issue which now has 16 cosponsors, and I believe two you are aware of. I believe we need to make absolutely certain that citizens and local authorities have a say in this Federal air noise policy that we ought to adopt.

We need to allow local mediation solutions to the aircraft noise problem like the one in place in Puget Sound to continue. My bill, H.R. 4818, the Aviation Noise Abatement Policy Act of 1990, supports the local mediation process and develops a national air noise policy with the following four steps:

First, it adds a sentence to the FAA's operating charter, requiring that the FAA consider noise at a level of priority equal with capacity and efficiency—not equal with safety, but equal with capacity and efficiency.

Second, it creates an advisory committee of State and local officials and private citizens to work with the FAA to develop a national policy on air noise.

Third, it requires that the national air noise policy include a program of financial incentives encouraging airlines to switch to quieter stage III engines.

And finally, H.R. 4818 guarantees a priority for the advisory committee's work: The FAA Administrator must perform an environmental impact statement on any routing change recommended below 15,000 feet.

I thank you for the opportunity to talk about this problem. I just want to tell you as a Congressman from the Northwest, Mr. Chairman, Congressman Clinger, I look forward to working with you in the months ahead and will do everything I can to help you craft legislation to address this problem, help you to get this legislation past the House.

And with that, I think we are ready to go to our panel, and I think we agreed that Jeanette—were you going to go first? Yes.

[The prepared statement of Mr. Miller of Washington follows:]

Representative John Miller

Testimony before the Aviation Subcommittee

September 25, 1990

Aircraft Noise

AIRCRAFT NOISE HEARING TESTIMONY
BEFORE THE AVIATION SUBCOMMITTEE
SEPTEMBER 25TH, 1990

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO ADDRESS THE SUBCOMMITTEE ON THIS VERY IMPORTANT, NOISY PROBLEM THAT DRASTICALLY AFFECTS THE QUALITY OF MANY OF MY CONSTITUENTS' LIVES. I WOULD ALSO LIKE TO TELL YOU HOW PLEASED I AM WITH THE FIVE MILLION DOLLARS INCLUDED IN THE 1991 TRANSPORTATION APPROPRIATION FOR AIRCRAFT NOISE RESEARCH. THIS IS A SERIOUS ENVIRONMENTAL ISSUE, AND I APPRECIATE THE CONCERN AND PRIORITY WITH WHICH THE SUBCOMMITTEE IS APPROACHING THIS PROBLEM.

IN FEBRUARY OF THIS YEAR THE FAA IMPLEMENTED A NEW "FOUR POST" FLIGHT PLAN TO DEAL WITH THE INCREASING DELAYS AND CONGESTION AT SEATTLE-TACOMA INTERNATIONAL AIRPORT. THE "FOUR POST" PLAN ALSO INCREASES THE NUMBER OF FLIGHTS OVER RESIDENTIAL COMMUNITIES. AS A RESULT, I HAVE RECEIVED HUNDREDS OF LETTERS AND CALLS SINCE THE PLAN WENT INTO EFFECT. AND I HAVE TALKED INDIVIDUALLY WITH MANY CONSTITUENTS FROM ALL PARTS OF MY DISTRICT ABOUT AIR NOISE. I HAVE WRITTEN TRANSPORTATION SECRETARY SKINNER TWICE, REQUESTING AN ENVIRONMENTAL IMPACT STATEMENT ON THE "FOUR POST" PLAN'S NOISE IMPACT. BUT, THUS FAR, NO EIS AS BEEN DONE.

I HAVE LEARNED, AND WORSE, HAVE HAD TO EXPLAIN TO MY CONSTITUENTS LIVING UNDERNEATH THE NOISE, THAT THE FAA, BY LAW, DOES NOT HAVE TO CONSIDER THE NOISE IMPACT OF THEIR DECISIONS. I HAVE LEARNED THAT IT IS ONLY BY FAA POLICY, NOT LAW, THAT NOISE POLLUTION IS CONSIDERED AT ALL--ONLY WHEN JETS ARE REROUTED BELOW THREE THOUSAND FEET. MY CONSTITUENT'S EARS, THEIR INTERRUPTED SLEEP AND THEIR RATTLING WINDOWS TELL ME IN NO UNCERTAIN TERMS THAT DEPARTING AIRCRAFT MAKE NOISE ALL THE WAY UP TO FIFTEEN THOUSAND FEET, FIVE TIMES GREATER THAN FAA POLICY.

MR. CHAIRMAN, MY CONSTITUENTS HAVE NOT WAITED FOR THE FEDERAL GOVERNMENT TO TAKE THE LEAD. THEY HAVE TAKEN THE LEAD AND HAVE APPROACHED THE AIR NOISE PROBLEM WITH AN EYE TOWARD A USEFUL SOLUTION. SEATTLITES HAVE CREATED A UNIQUE AIRCRAFT NOISE MEDIATION PROCESS. THEIR MEDIATION PROCESS HAS PRODUCED AN AIR NOISE PACKAGE FOR SEA-TAC AIRPORT. THE PACKAGE INCLUDES AN OVERALL NOISE BUDGET AND RESTRICTIONS ON NOISY STAGE TWO AIRCRAFT. NOT EVERY SEATTLITE AGREES WITH THE MEDIATION'S FIRST RESULT, BUT THE MEDIATION APPROACH TO THE AIR NOISE PROBLEM HAS CONSIDERABLE VALUE.

MR. CHAIRMAN, I WOULD LIKE TO INTRODUCE YOU AND THE COMMITTEE TO THREE OF SEATTLE'S LEADERS ON THE AIRCRAFT NOISE PROBLEM;
SEATTLE CITY COUNCILMAN JIM STREET, THE COUNCIL'S GROWTH POLICIES AND REGIONAL AFFAIRS COMMITTEE CHAIRMAN;
FORMER SEATTLE CITY COUNCILWOMAN JEANETTE WILLIAMS, CO-CHAIR OF THE SEATTLE COMMUNITY COUNCIL FEDERATION'S AIRCRAFT NOISE GROUP, THE LEADING CITIZEN'S ACTIVIST GROUP ON THE AIR NOISE PROBLEM;

AND PORT OF SEATTLE COMMISSIONER PAIGE MILLER. THE PORT OPERATES THE AIRPORT AND BROUGHT THE NOISE MEDIATION TOGETHER.

BUT BEFORE WE HEAR FROM THEM, I WOULD LIKE TO BRIEFLY LET YOU KNOW OF A BILL I HAVE INTRODUCED TO ADDRESS THIS ISSUE. MR. CHAIRMAN, AS THIS SUBCOMMITTEE AND AS CONGRESS CONSIDERS A FEDERAL AIR NOISE POLICY, WE NEED TO MAKE ABSOLUTELY CERTAIN THAT CITIZENS AND LOCAL AUTHORITIES HAVE A SAY IN THAT POLICY. WE NEED TO ALLOW LOCAL MEDIATION SOLUTIONS TO THE AIRCRAFT NOISE PROBLEM, LIKE THE ONE IN PLACE IN SEATTLE, TO CONTINUE. MY BILL, H.R. 4818, THE AVIATION NOISE ABATEMENT POLICY ACT OF 1990, SUPPORTS THE LOCAL MEDIATION PROCESS AND DEVELOPS A NATIONAL AIR NOISE POLICY WITH THE FOLLOWING FOUR STEPS:

FIRST, IT ADDS A SENTENCE TO THE FAA'S OPERATING CHARTER, REQUIRING THAT THEY CONSIDER IT AT A LEVEL OF PRIORITY EQUAL WITH CAPACITY AND EFFICIENCY.

SECOND, IT CREATES AN ADVISORY COMMITTEE OF STATE AND LOCAL OFFICIALS AND PRIVATE CITIZENS TO WORK WITH THE FAA TO DEVELOP A NATIONAL POLICY ON AIR NOISE.

THIRD, IT REQUIRES THAT THE NATIONAL AIR NOISE POLICY INCLUDE A PROGRAM OF FINANCIAL INCENTIVES ENCOURAGING AIRLINES TO SWITCH TO QUIETER STAGE THREE ENGINES.

AND FINALLY, H.R. 4818 GUARANTEES A PRIORITY FOR THE ADVISORY COMMITTEE'S WORK--THE FAA ADMINISTRATOR MUST PERFORM AN ENVIRONMENTAL IMPACT STATEMENT ON ANY ROUTING CHANGE RECOMMENDED BELOW FIFTEEN THOUSAND FEET.

THANK YOU FOR THIS OPPORTUNITY TO TALK TO YOU ABOUT THIS PRESSING PROBLEM. I ANTICIPATE WORKING CLOSELY WITH YOU IN THE COMING MONTHS AS THE SUBCOMMITTEE ADDRESSES THIS ISSUE.

Mr. OBERSTAR. Thank you very much, John. We very greatly appreciate the time you spent on this issue, the legislation you introduced, your help in organizing the witnesses here today, and we do accept readily your offer to help in crafting legislation. We are going to need all the help we can get in drafting a bill which we intend to do next year.

As I said at the outset of the hearings early this morning, that we intend to proceed toward development of a national aviation noise policy, and we are going to do that with or without the participation of the Department of Transportation. I expect by the time we have moved through our process, they will be with us in developing something, rather than be on the outside, and in the unenviable position of perhaps having to recommend a veto, something they didn't participate in.

I expect we will have the Department participating with us hand in hand as we go along, as we intend to move on a very fundamental issue that now looms to the future growth of aviation.

Mr. MILLER of Washington. Glad to hear that.

Mr. OBERSTAR. Ms. Williams.

Ms. WILLIAMS. Thank you very much, Mr. Chairman.

My name is Jeanette Williams. I am here today as a citizen. I represented the citizens of Seattle for 20 years as an elected member of the Seattle City Council, and since I have left public office, I have become very active in the aircraft noise group coalition.

I am here speaking simply as that, because my energy has not diminished. Something is happening within our city. It has driven me to come here to speak to you. It has driven the thousands of Seattlites to join forces, and it is all be the FAA's illegal implementation of the infamous-now Four Post plan, the flight path that goes right over the heart of the City of Seattle.

And our main airport is SEA-TAC, which is only 12 miles south of the city, so we have the pleasure of both the acceleration and deceleration of the planes as they go over.

Now, let me say something else: We thought we had solved this problem long ago. In the 1970s, the great Senator Warren Magnuson fostered the adoption of the Elliot Bay Noise Abatement Procedures. I was involved in that process at that time.

This took the air traffic over the waters of Elliot Bay, which is open space adjacent to Seattle. But now the FAA has decided these routes, routes over the water, which were agreed to by all parties, are not good enough, and so they have instituted the Four Post Plan, and we are all suffering from it.

The public response to the changes has been phenomenal. Never in all my years of public service have I seen such united opposition in our citizenry. The Port of Seattle, which operates the airport, has received literally thousands of complaints. So has the FAA. We have had numerous reports of classrooms being disrupted, people being unable to sleep, and even of people who are now unable to use their own backyards because of the constant roar.

One of the flight tracks goes over one of the hilltops in Seattle. We have lots of hills there, and it is over what we call Capitol Hill, but affectionately called "Pill Hill." Actually, all our medical facili-

ties are up there, and it has been disruptive to the patients—believe me, we have heard from the hospitals.

So, we are faced with residents moving away from the city, and that has happened. We are facing apartment house owners. We have had some complaints of potential tenants are being deterred from moving in because of the racket. And this goes on and on.

Now, Seattle has always prided itself in its neighborhood activism. And we have more than 28 groups right now in the coalition. It is representing many thousands of people, and we represent neighborhood counsel and organizations in the city.

Now, we don't—while we don't always agree on all issues, this is one where we have banded together in really an unprecedented show of unity to process the new flight path.

We are bringing a lawsuit against FAA, that is one of our ways we are protesting. We feel something has to be done to stop this unnecessary degradation of our quality of life.

Our lawsuit was brought to the United States Court of Appeals by the Ninth Circuit by the Seattle Community Council Federal on August 20th. Many individuals and groups from in and outside the city limits are also joining us in our efforts to preserve our region's quality of life.

The City of Tacoma within the last few days, which also shares SEA-TAC with the City of Seattle, has decided to join us as a friend of the court in our suit, pending suit against the FAA, and we anticipate—we have been hearing from other municipalities in the Puget Sound Basin who may well be doing this as well.

The aircraft noise problem is particularly troublesome to us because of the unwillingness of any government agency to take responsibility for the impact of aircraft noise on the neighborhoods of Seattle.

Over the years, citizen representatives have attempted to contribute to the solution of the aircraft noise problem. The most recent of this effort is the SEA-TAC Noise Mediation Committee, formed by the Port in 1987. This committee includes representatives of FAA, the Port of Seattle, the airlines, and some citizens from affected communities.

Its agenda was to resolve aircraft noise impacts in a manner that would be acceptable to all affected interests.

However, before this committee could resolve the issue of noise management, the FAA unilaterally changed the flight paths for most arriving and departing aircrafts so those planes now fly low over densely-populated areas of Seattle and King County. The human environment in Seattle and surrounding areas has been profoundly disrupted and severely degraded by the arbitrary action taken by FAA in imposing new flight paths over the city.

The problem of aircraft noise has been gradually increasing over the years, and now has exploded with the implementation of the new flight plans. It shows no signs of letting up. And, indeed, the number of flights continues to increase, and as expected, undoubtedly will grow worse.

In spite of the obvious severity of the noise impacts caused by the new flight paths, the FAA did not prepare an environmental impact statement as we believe is required by the National Environmental Policy Act. Instead of assessing environmental impacts,

the FAA declared no significant noise impacts would occur because all the new flight patterns were all outside of their 65 LDN noise contour.

Seattle residents, community groups, and institutions have emphatically rejected the FAA position.

In adopting the new flight paths, the FAA violated NEPA, abandoned its responsibility to the noise mediation process, failed to provide a meaningful response to extensive public criticism of its draft environmental assessment, and has ignored the clear public outcry as indicated, for example, in the huge increase in noise complaints phoned in to the Port of Seattle's noise hotline.

Seattle is not only in its outcry. Cities from New Jersey to California are being increasingly subjected to intrusive aircraft noise, with absolutely no effective avenue to influence the unilateral actions of the FAA.

Clearly, the FAA needs a clear directive that it, like all other government agencies—and might I say, there is no government agency that I know of that does not go through the EIS process when they are bringing in some dramatic changes into any kind of community. They all do it except for the FAA.

And we believe the FAA needs this directive, it should be subject to the requirements of NEPA, and these type of situations. House Bill 4818 is clearly and important step in that direction.

This bill, by requiring in the future that the FAA prepare an EIS on air route changes and consider aircraft noise abatement as one of its top priorities will provide a much-needed avenue for communities affected by aircraft noise.

Under this bill, the full scale of rebellion of citizens, which we are experiencing in Seattle today, will be unnecessary. Because in the future, FAA will be explicitly required to consider the effects of aircraft noise on affected citizens.

The Seattle Community Council Federation strongly supports this bill and urges its adoption. Thank you.

[The prepared statement of Ms. Williams appears on p. 321.]

Mr. OBERSTAR. Thank you very much, Ms. Williams.

Ms. Miller.

Ms. PAIGE MILLER. Mr. Chairman and subcommittee members, thank you for this opportunity to testify on the aircraft noise issue. I have provided you with a full written text of my testimony and would like to summarize my remarks.

Mr. OBERSTAR. Your statement will appear in the record in full.

Ms. PAIGE MILLER. Thank you very much.

I am Paige Miller, a Commissioner for the Port of Seattle, which operates Seattle-Tacoma International Airport SEA-TAC, which serves as the international and domestic gateway for the entire Pacific Northwest and Alaska. With me today is Joe Sims, our Director of Planning for SEA-TAC.

We in the Northwest pride ourselves on our quality of life, on maintaining a balance between a strong economy and a first-rate environment.

Our particular challenge at the Port of Seattle is to meet out need for additional air capacity while at the same time reducing aircraft noise. Our citizens don't think jets roaring over their

homes is consistent with a good quality of life. Noise pollution is an environmental issue just as is air or water pollution.

At SEA-TAC, we have been leaders in programs to reduce noise impacts since the early seventies—acquiring nearly 1,400 noise-impacted homes, insulating homes under part 150, and responding to noise complaints through a flight track monitoring program.

We believe our past noise abatement accomplishments have served the community well. But the growth of air traffic and concern about aircraft noise led us to believe we had to do even more.

So we established a consensus-based mediation process to negotiate additional noise reduction programs. Agreeing to consensus negotiation was a political risk for us, but one we felt we had to take. The Port went into the process as only one of a number of parties to the negotiations.

Others included the airplanes, pilots, airport users, the FAA and community representatives. Each party had a vote, and each party had to agree to what steps would be taken. This was not an advisory committee, but a group of equals charged with reducing noise.

We hired a neutral mediator and the committee selected its own technical experts. After 150 meetings and 17 months of negotiations, the mediation committee reached an agreement which will cut aircraft noise in our community by 50 percent by the year 2001. We believe our agreement is one of the most comprehensive in the Nation.

The key to the plan is what we call a "noise budget" which will phase out stage II aircraft at SEA-TAC over time. Also important in the committee's agreement is a phased-in ban on stage II aircraft at night, when aircraft noise is most disruptive.

The noise mediation committee's package does not limit growth or air capacity. Growth can occur through planning and scheduling, and with replacement of the noisier and older stage II aircraft with quieter stage III planes.

Our efforts are in the best long-term interest of the airlines. Failure to further address the aircraft noise issue would make it next to impossible to meet our future air capacity needs. And our time is short: SEA-TAC is expected to reach its capacity limit in less than 10 years.

In our community, as in others, it is extremely difficult to site any public facilities, especially new airport capacity. We can only do that if we reduce aircraft noise.

The mediation committee could not agree on flight tracks. Everyone said: "Not over my neighborhood." This was a disappointment for many of us who had hoped for an equitable distribution of noise through a citizen agreement.

During our mediation process, the FAA representative attended, but were prohibited by current FAA policy from actively participating in some key discussions. This made the committee's work much more difficult.

However, the FAA did help us by announcing plans in the middle of the mediation process for major flight track changes because of concerns over safety, congestion and capacity. The uproar over this announcement nearly destroyed the mediation process.

Two days after the committee finished its work, the FAA imposed its flight track changes, known as Four Post. Many, many

communities in our area vehemently oppose the changes. However, the airlines have promised to back off their commitment to our mediated agreement if Four Post is rescinded or invalidated. Changing a flight path can damage even the most progressive noise abatement program.

Let me close with our recommendations:

First, we cannot hope to increase air capacity unless we first tackle the noise issue. Meaningful noise reduction programs must lead to real and measurable improvement. The airlines need to understand the reality that if we cannot mitigate noise, my constituents and your constituents will demand that we limit capacity. That will hurt all of us, but it will particularly hurt the air carriers. Thoughtful, well-crafted noise reduction programs are in the interest of local communities, the airlines and our national transportation system.

Second, local communities need the flexibility to tailor noise mitigation plans to meet their own local conditions. We join with other airports in supporting phase-out of stage II aircraft.

However, such a national policy should not preempt constructive noise reduction plans such as ours. We have demonstrated that you can responsibly address the aircraft noise issue. The bill introduced in the Senate yesterday alarms me. Congress should not preempt agreements reached by consensus such as Seattle's.

Finally, Congress must direct the FAA to actively participate in the development of local noise reduction plans. The FAA's active participation can help achieve an efficient, workable plan that also reflects the national interest.

Mr. Chairman, as the home of Boeing, we are well aware of the importance of air transportation. As the most trade-dependent State in the Nation, we work hard to promote aviation commerce. While we have a particular appreciation for the importance of commercial aviation, I believe our community's concern about noise is not unique, and you have certainly heard that today.

If we hope to meet our air capacity needs in Seattle and many other cities, it is absolutely critical that we first address the issue of aircraft noise.

On behalf of the Port of Seattle, thank you for this opportunity to testify and share with you our experience in the Northwest.

[The prepared statement of Ms. Paige Miller appears on p. 248.]

Mr. OBERSTAR. Thank you very much. It is a very, very thoughtful and well-considered statement. We appreciate that.

Mr. Street.

Mr. STREET. Chairman Oberstar and Congressman Clinger, I would like to also express my appreciation for this opportunity to appear before you and advocate on behalf of the citizens of Seattle, which I represent, to share with you their frustration and anger about the current impact on the quality of their lives of uncontrolled and unmitigated noise from aviation traffic.

The written statement that I have prepared has already been distributed to you, and I will concentrate in my remarks on some of the highlights, in particular general policy questions.

All of the testimony that I have heard today, and I think the comments that I have heard from you reflect really the first message of this hearing, and that message is that noise is real. It is a

real cost, a real impact that deserves to be considered and prioritized along with all of the other costs of aircraft activity of this country.

On Sunday afternoon, I was watching my daughter's soccer game and another parent walked up to me and said, "Jim, I would like to have a long conversation with you about aircraft noise." And she went on to describe, Sunday morning, that morning at 6:00, the beginning of the flights out of SEA-TAC, and the impact it had on her and her family.

Several days ago I was talking to my son, who is 21, about his future plans, and he said I don't think I want to live in a city like Seattle. I feel like it is closing in around me. And without any instigation from me, he went on to describe a walk he had taken that night up Capitol Hill, which is right in the path of aircraft travel, and the impact on him of hearing one aircraft after another.

Last week I received a call from a woman who lives in North Seattle, near Jeanette Williams, who has cancer and has to stay home all day. She described the effects on her attempt to sleep during the day of the aircraft passing over her house every few minutes. Noise is real.

The average in statistical terms of calls in the month of August to the Sea-Tac Airport's hot line on noise issues was 2,000 this year. That is 20 times what it was four years ago, twice what it was a year ago, and reflects the fact that we really have hit a wall when it comes to noise in many of the cities of this country.

And yet for FAA that noise that I just described, the parent, my son, the woman who is trying to sleep, does not exist under FAA policy. It is not the kind of noise to be counted, because it is not noise that can be measured for 3000 feet or below. It does not exist and is not to be considered.

I asked to be handed out to you a map which shows something typical of many cities. This happens to show a day in May several months after the "Four Post" plan that both Jeanette Williams and Paige Miller have described was implemented. When I first received this map I turned it upside down, I turned it to the left and turned it to the right, trying to find my city, and finally realized the city was totally covered by the black lines. There are probably 500,000 people who live under those lines.

Every one of those lines traces a path of irritation and anger and disrupted and interrupted conversations and lost sleep. Every one of those lines reflects that kind of an impact.

Noise pollution is a particular source of frustration for me as a local elected official, because like you, I hate to pass the buck. Passing the buck to some other level of government does not make my constituents happy, and it usually does not leave them satisfied.

When we first got this issue we went to the port of Seattle, and the port of Seattle said we cannot do many of the things we would like to do because the FAA will not support them. We went to the FAA and expressed our dismay and anguish over these impacts, and the FAA pointed at you. It pointed at Congress, and it said we are acting pursuant to national policy, and as long as national policy is what it is, noise will not receive the emphasis that you want it to receive compared to other priorities.

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So I guess what that means, unless there is some other place I can go, that the buck stops here. And for that reason I particularly admire your willingness to take on this issue which politicians for many years have been reluctant to take on in the face of the kind of pressures that arise around it.

Why should you act with force and effect? First, you should act because you care about the environment, and you already heard eloquent testimony today about the environmental realities of noise pollution.

Second, you believe in fairness. If the Federal Government were to pass a law that required the citizens of Seattle to pay all of the cost of aviation gasoline expended by Federal Express landing in Seattle, we would all be outraged, but the reality is that the citizens of Seattle are being asked to pay all of the cost of noise pollution without compensation, a vital part of running an airplane and one we are not providing any kind of national policy to address.

Third, you believe in efficiency. If FAA ignored the cost of gasoline in establishing aircraft flight paths we would think they were totally out of line in terms of implementing national policy. Noise costs are just like aviation costs, and need to be treated the same way. They are real, they make a difference in people's lives, and probably have a greater impact on the people in Seattle than the cost of aviation gasoline.

Finally, I think Port Commissioner Miller made particularly strong testimony in this regard. You care about the capacity of our national aviation system, and as Paige eloquently pointed out, if we do not address the noise problem, then the four years of extra capacity that was achieved by the FAA's recent action in Seattle will simply be a drop in the bucket and we will be in a position of not being able to locate a new airport, not being able to build new runways, and we will be up against much more severe capacity problems before we realize it, far beyond anything FAA or this country faces today.

There are two specific instances I want to mention, and one has been covered, that is the recent noise mediation in and south of SEA-TAC. The only thing I would add to that, as far as I could tell, FAA, acting pursuant to national policy, basically said our hands are tied when it comes to routes and to schedules, we will not put them on the table, they will not be part of a noise budget.

The second instance I would like to mention to you is a lake in Seattle called Lake Union, which is a place where float planes fly out of Seattle. It is surrounded on three sides by hills covered with residences and on the south by downtown Seattle. Float planes have long operated with the support of the people who live in that neighborhood, but in the last three or four years the level of float plane activity has reached the point where people now are screaming for action.

We have gone to the FAA and they said they will do nothing. We have gone to our own law department, they say we are preempted by national policy that prevents us from land use actions that in fact will be based on noise which FAA has only the power to deal with. We have in effect in that situation a black hole of nonregulation in which FAA refused to act and which we are powerless to act. It is a basic problem.

You heard a number of recommendations today. I won't repeat them. I think a number of them are excellent. Congressman Miller's proposal basically saying let's elevate noise in national policy to the same level as efficiency and capacity, and actually realize that it is part of the efficiency and capacity issue, that it cannot be separated, we strongly support.

No amount of badgering FAA is going to be effective until Congress says FAA, this is a new national policy, you must act according to new priorities that reflect the impact of noise.

I would particularly emphasize putting national policy behind the concept of the noise budget such as was enacted in Seattle and adding to the table for noise budget negotiations flight paths and schedules, which now cannot be addressed and which are a crucial factor in determining what kinds of noise people actually experience.

I appreciate very much the chance to come testify to you. I wish the best of luck. We wish you the best of luck. It is incredibly important, and both our environment and national air policy will depend on your decisions.

Thank you very much.

[The prepared statement of Mr. Street appears on p. 300.]

Mr. OBERSTAR. Thank you very much also for a very thoughtful and well considered testimony that bears heavily on the issue at hand and which we will take very careful consideration.

I appreciate this panel particularly, because as some of you mentioned, you are the home of Boeing, and that there should be this rising outcry of concern about noise from the home of aircraft manufacturing is in itself a statement. It is sort of a throwback to the old days when a town saw smoke coming from a chimney, they said that is jobs. You hear noise in your community, that is your smokestack, and just as Pittsburgh decided it didn't want soot on everything, so people are deciding they don't want noise intruding into every aspect of their lives.

Just a few very, very brief questions, and I hope brief answers, because we have a vote in progress and we have to run.

Has rerouting of flights reduced delays and congestion?

Ms. PAIGE MILLER. Joe Sims can best answer that.

Mr. SIMS. Arrivals to the airport from the north, which is the part that flies over the city of Seattle, the FAA feels the capacity has gone up from about 42 an hour to about 60 an hour, so there is some measurable difference.

Mr. OBERSTAR. So it has been successful in increasing the capacity in moving more aircraft, but at the expense of more noise. Is it more noise on more people? What role has the FAA, Ms. William, played in your mediation process?

Ms. WILLIAMS. Nothing.

Ms. PAIGE MILLER. Joe was at the table in mediation, so I will ask him to answer on that too.

Mr. SIMS. The FAA learned from the East Coast the plan, because that had gone on for about a year or so before the situation evolved in Seattle, so they did participate more and they certainly were present and willing and able to discuss what they had in mind. They used our mediation process as a vehicle to do that and they certainly came to a lot of meetings.

Nevertheless, when it came down to it they called that shot on how they wanted to make the changes on—not really on noise, but on the other criteria, and it did cause a difficult problem for the other positive things about the mediation process that we did achieve.

Mr. MILLER of Washington. Mr. Chairman, could I jump in with one comment, because—this is something Jeanette said earlier. You have been to Seattle, so you know about Elliott Bay and a lot of the flights used to come in off of Elliott Bay, okay. Now we know that flights are increasing and we understand that—as you said, we are the home city for Boeing and an international trade center, but the interesting thing is, not only did flights increase, but flights—and this came out in our discussions this morning, were shifted from over Elliott Bay, the water, to over residential communities.

And this happened because of efficiency and congestion, and a lot of other factors, but it brings out the whole point. You wonder what might happen if noise impact got the same attention as some of these other factors.

So it isn't just that oh, well, nationally flights have increased, and there is going to be more impact, there was a shifting here, as well as increase.

Mr. OBERSTAR. Thank you.

Mr. Clinger.

Mr. CLINGER. I just want to thank the panel very much. I really appreciate your testimony. You have been very helpful to us as we move into this very, very complex area.

Mr. OBERSTAR. Did the FAA at any point give any of you in your respective positions an indication that taking noise into consideration would have had an adverse impact upon their safety, capacity, and so forth decisions?

Ms. PAIGE MILLER. They had, under the old agreement, taken noise into consideration in implementing the Elliott Bay route, which was a noise abatement route. What they decided was in order to decrease delays they would shift to this dual approach "four post" plan. What they didn't tell us was that they would move all the traffic out of the noise abatement Elliott Bay approach and bring all of it in over residential areas during peak times.

And so they never said to us this would affect safety, and we are going back to them now and saying surely if you have a "four post" plan, there are ways to implement it that would be better in reducing noise, and the port is pushing on them to do that, but I don't think that they really considered noise an important issue. They considered safety, efficiency, convenience, ease for the pilots, and those sorts of things.

Ms. WILLIAMS. Could I put in one word here?

The missing element all the way through is we are talking this—they have been talking to a relatively small agency and not the public generally. The point I wish to make here is the great importance is to have the public involved from the beginning, going in.

Mr. OBERSTAR. It is clear to me that is the missing element all along; the FAA is not bringing the public in and not allowing them to participate in decisionmaking.

Mr. STREET. I met with a community group and FAA during this debate, and what FAA told us was noise it not a priority. Noise is something we cannot give the kind of priority you want us to give, because of existing national policy, and unless national policy changes we are not going to change. I don't think process by itself will cure that deficiency. It is going to take a change in priorities that recognizes noise is part of efficiency and part of environment.

Mr. OBERSTAR. I have to conclude at this point. I just want to point out that while we are initiating this process, Congress can't do it alone, we need the participation and partnership of the administration, that is the Department of Transportation and the White House, in moving toward policy. Nothing can be passed, can become law, if the President doesn't sign it. There has to be a partnership there. We hope by initiating this process we get their attention and their participation.

Thank you for your splendid cooperation. I might say in conclusion I took our subcommittee and Members and staff up to Seattle last December to look at the research that Boeing is doing on aircraft noise abatement and reduction. We were very much enlightened by the technological progress that is being made.

[Vote recess.]

Mr. OBERSTAR. Continuing with the Illinois contingent led by my colleague Henry Hyde.

We have a serious issue at hand. I am glad to have you present the witnesses.

TESTIMONY OF HON. HENRY J. HYDE, A REPRESENTATIVE FROM ILLINOIS

Mr. HYDE. Thank you.

Let me say that I sit in awe at your ability to sit here all day and listen to statement after statement. I know how difficult that can be. You do it because you are aware of how important the issues are to your witnesses. This is a very important issue to us.

I have the great pleasure of presenting a group of experts who are very familiar with the problem and can tell you firsthand what the problem is and make some awfully good suggestions.

First of all, I am accompanied by Martin Butler, the Mayor of Park Ridge, Illinois, right up against O'Hare field, and he is the Chairman of the Suburban O'Hare Commission.

I am with John Geils next to him, the Mayor of Bensenville, Illinois, my town, where I live. John is the vice chairman of the Suburban O'Hare Commission. And Bensenville abuts right up against O'Hare field.

They are not only here in an official capacity, but as citizens, too.

Joseph Karaganis is the attorney for the Suburban O'Hare Commission, and is a former Assistant Attorney General of the State of Illinois for environmental matters and is one of the most knowledgeable aviation and environmental attorneys I have ever encountered.

So they will, as soon as I have made a very brief preliminary statement, testify.

I have an excellent statement. I say it is excellent because Mr. Karaganis was instrumental in providing much of the data for it.

Therefore, I am not being self-indulgent when I tell you it is an excellent statement.

I will read the first couple of paragraphs, give you paragraph headings and hope that you or your staff will get a chance to read it because it is an excellent summary of the problem with suggestions as to what we might do.

Mr. OBERSTAR. It has been already, and it is a splendid record and will appear in the record in full.

Mr. HYDE. Thank you.

Mr. Chairman, Members of the committee, thank you for the opportunity to appear before you today on the vital subject of aviation noise. As you know, my district includes Chicago's O'Hare Airport and many of the noise-impacted residential communities which surround it.

It is my pleasure to introduce to you today the Chairman of the Suburban O'Hare Commission, Mayor Martin Butler of Park Ridge, Illinois, and its vice chairman, Village President John Geils of Bensenville, Illinois.

Before they make their presentation, I would like to present for this committee's consideration a few observations of my own regarding the Federal role in aviation noise policy. Current Federal aviation noise policy is a hodgepodge of poorly conceived and badly implemented programs which fail to recognize key aspects of airport development and operation as well as the need to protect the millions of airport neighbors currently living and suffering from excessive jet aircraft noise.

Instead of an overall policy which encourages the timely development of new, environmentally sound airport facilities with significant real noise protection for airport neighbors, our current policy seems to be focused on jamming more aircraft into already overstressed facilities such as O'Hare, with virtually no meaningful relief to noise injured neighbors.

Among the failings in current Federal aviation noise policy are—here follow several paragraphs listing what I believe to be the failure in our current noise aviation policy. I will read the headings of the paragraphs.

Failure to acknowledge the role of states.

Failure to protect the legal rights of noise victims.

The continuing false claim that state law damage remedies are currently preempted by Congress.

The bizarre statute of limitations bar.

The failure to distinguish land-use concerns between existing urbanized sites and green-field new sites.

The failure to focus the Federal effort on new environmentally sound airport construction.

Failure to break the airlines antitrust financing stranglehold.

Failure to move beyond stage 3 aircraft.

Having voiced my criticisms, which are more fulsomely set forth in my statement, here are my suggestions.

On new engine technology, keep the decision-making responsibility and the concomitant liability for airport operations with state and local governments, recognize the role of the states, protect the rights of noise victims to state and Federal damage remedies for personal injury and property damage, rebuff current industry at-

tempts to preempt state and local authority, replace the part 150 program, focus on construction of new environmentally sound airport facilities and several subparagraphs under all of those headings.

I want to present the very expert and sincere, authentic testimony of the two mayors of the communities which directly abut O'Hare and who head up the very effective O'Hare commission. Then Mr. Karaganis, who is the attorney and very knowledgeable.

Thank you.

Mr. OBERSTAR. Thank you, Henry.

[The prepared statement of Mr. Hyde follows:]

STATEMENT OF
CONGRESSMAN HENRY HYDE
BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 25, 1990

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today on the vital subject of aviation noise. As you know, my district includes Chicago's O'Hare Airport and many of the noise impacted residential communities which surround it. It is my pleasure to introduce to you today the Chairman of the Suburban O'Hare Commission, Mayor Martin Butler of Park Ridge, Illinois and its Vice Chairman, Village President John Geils of Bensenville, Illinois.

Before they make their presentation, I would like to present for this committee's consideration a few observations of my own regarding the federal role in aviation noise policy. Current federal aviation noise policy is a hodgepodge of poorly conceived, and badly implemented programs which fail to recognize key aspects of airport development and operation as well as the need to protect the millions of airport neighbors currently living and suffering from excessive jet aircraft noise. Instead of an overall policy which encourages the timely development of new, environmentally sound airport facilities with significant real noise protection for airport neighbors, our current policy seems to be focused on jamming more aircraft into already over stressed facilities such as O'Hare, with virtually no meaningful relief to noise injured neighbors. Among the failings in current federal aviation noise policy are:

A. **Failure to Acknowledge the Role of the States.** Current federal noise policy fails to clearly recognize the constitutional and programmatic role of the states in the development and operation of airports and in the control and prevention of noise injury to airport neighbors. Under our constitutional system, the states are the creators and shapers of the municipal authorities which operate most major airports – and have power separate and distinct from the state police power prohibited by *Burbank*. It is time for the federal government to acknowledge the power of the states in shaping and controlling airport development and operation. At the present time, many municipal proprietors make the specious argument that under *Burbank*, states have no power to expand, contract, or limit the authority of their municipal creations to operate

airports. Such arguments are clearly wrong, and its time we in Congress acknowledged the rightful role of state governments in this area. As discussed below, this clear existing state power to control airport operations by the state's political creations is a necessary concomitant of the state's existing power to regulate land use decisions by its political subdivisions.

B. **Failure to Protect the Legal Rights of Noise Victims.** Current federal aviation noise policy fails to clearly delineate and protect the rights of citizens injured by aircraft noise to recover compensation for their personal injuries and property damage under state and federal law. Though the right to recover such damages is clear from an analysis of relevant case law, airport proprietors and airlines have used Congress's lack of a clear statement on this subject -- and on the related subject of statute of limitations -- to stymie critically needed compensation for victims of noise injury. Though under federal and state law victims of noise injury clearly have the right to recover for personal injuries and property damage caused by noise from aircraft overflights (See case law cited below), some airport operators -- notably Chicago -- continue to argue that this Congress has somehow preempted or otherwise precluded damage recovery. These spurious claims have taken two forms:

1. **The continuing false claim that state law damage remedies are currently preempted by Congress.** Though Congress, the Courts, and the FAA have repeatedly made clear that the airport operator has the current authority to limit noise in and around its airport through such controls as a limit on the number of operations, nighttime curfews, limits on noisy aircraft -- and a number of other controls -- operators such as Chicago argue that all state law damage remedies are preempted because somehow Congress has prohibited operators from taking such actions. Since, argues Chicago, Congress has preempted Chicago from taking such noise abatement action, Congress has indirectly preempted any state law damage remedies for either personal injury or property damage. It is time for Congress to clearly state that it does not intend to preempt state law personal injury and property damage remedies for victims of aircraft noise. Conversely, if there are those among us who wish to destroy such remedies, we ought to have the courage to openly declare our intent to preempt.

2. **The Bizarre Statute of Limitations Bar.** Under *Griggs v. Allegheny County*, 369 U.S. 84 (1962), homeowners who suffer substantial

interference with the use and enjoyment of their property have a constitutional claim under the Fifth Amendment for the taking of their property without just compensation. The FAA estimates that there is approximately a 1% loss in property value for each 1 decibel increase in noise over the 65 Ldn level. For O'Hare area homes this represents a loss to homeowners of hundreds of millions if not billions of dollars. Further, the FAA acknowledges that tens of thousands of families around O'Hare live in virtually intolerable conditions within this 65 LDn contour.

Until 1988, the statute of limitations to recover for such a taking would be borrowed from the state statute governing similar state constitutional taking claims -- in most states a period of ten or more years. However, as a result of a quirk in Supreme Court interpretation of the Civil Rights statute, 42 U.S.C. Section 1983, the statute of limitations for the federal constitutional claim for the taking of land is now governed by the much shorter state personal injury statute. See *Bieneman v. City of Chicago*, 864 F.2d 463, 467 (7th Cir. 1988), The result of that decision is that tens of thousands of homeowners around O'Hare – as well as hundreds of thousands throughout the country – have suddenly lost – *without compensation* – their federal constitutionally guaranteed rights to compensation. Congress should address this gross injustice by establishing a federal statute of limitations for *Griggs* airport noise taking claims which is the same as the analogous state constitutional taking claim. Otherwise the majestic constitutional right to just compensation for the seizure of property rights by the government becomes a cruel hoax on injured homeowners, and the airport operators and the airlines receive a multi-billion dollar gift from Congress at the expense of the homeowner.

C. **The Failure to Distinguish Land Use Concerns Between Existing Urbanized Sites and Green-field New Sites.** Current federal aviation noise policy fails to distinguish between new airport construction or expansion in unpopulated rural areas and airport operational expansion in densely populated urban centers such as those surrounding Chicago's O'Hare or New York's LaGuardia. Federal programs which encourage or require local airport sponsors to prevent incompatible land use are of little use -- and indeed often counterproductive – when applied to established areas such as the long standing communities surrounding O'Hare. Indeed, prohibition of residential use in so-called "infilling" conditions means that the property is likely "taken" under the Fifth and Fourteenth

Amendments, since it is both unsafe and unsound to allow industrial and warehouse operations to be "infilled" into existing residential neighborhoods. Land use controls are great ideas when building a new airport in a green-field site with a major land buffer. Such controls provide little relief and create false expectations when we attempt to apply them in existing urbanized settings.

Land use controls are of little benefit in such areas and stand as an excuse for airport operators -- who have the ability and the authority to control noise -- to justify stuffing more operations into antiquated facilities while blaming the victims -- those whose homes have existed in the area for decades.

D. **The Failure to Focus the Federal Effort on New Environmentally Sound Airport Construction.** Current federal noise policy seems to be focused on providing political palliatives to the ever increasing operational growth at *existing* major airports such as O'Hare. Little effort is being made to encourage the construction new environmentally sound airport facilities, built from the start with environmental protection of their neighbors as a central goal. We should be planning and requiring that the enormous air traffic growth -- which the FAA has said will develop in the coming decades -- will not be jammed into antiquated, over stressed existing airports with attendant noise injury for airport neighbors. We need to develop a 21st century federal policy for airport development and operation which will address future air transportation needs in an environmentally acceptable manner.

E. **Failure to Break the Airlines Anti-Trust Financing Stranglehold.** Current federal policy has done little to develop new financing techniques desperately needed to break the anti-trust stranglehold currently blocking vitally needed construction of new environmentally sound airport facilities. Under our current system, the primary source of funding for new airports is through airport landing fees paid under contracts between the operator and the airlines. Airlines with major control of hub cities have used their lock on construction financing to block new airport construction so as to prevent new competition from entering their market. What may be good from the individual airlines anti-competitive perspective is not good for the national goal of environmentally sound new airport construction.

F. **Failure to Move Beyond Stage III.** Current federal policy seems to be stuck in the mud with regard to technological progress in abating aircraft

noise. While we are debating the transition from Stage II aircraft to Stage III aircraft – technological limits designed and developed many years ago – little effort is being made to require even further progress in engine noise controls. Our lack of progress in this area stands in sharp contrast to the action-forcing efforts of federal legislation in such areas as fuel economy and air emissions for autos. We don't stand still in those areas and there is no reason why we should not be requiring more effort in the area of aircraft engine noise controls. Moreover, the failure to make advances in these areas will stand as a further impediment to the siting and construction of new airports.

Having voiced my criticisms, let me make my suggestions:

A. New Engine Technology. This subcommittee ought to investigate the current state of aircraft engine noise research and give serious consideration to establishing action-forcing new and tougher standards for aircraft engine noise emissions. Even within so-called Stage III aircraft there are wide ranges of noise control performance, and we should not let Stage III be the end point of engine noise control. We should also be very cognizant that while Stage III aircraft provide some relief, that relief can be lost by simply adding more operations. If new technology offers no promise of relief, then we will have to emphasize even larger land buffers and other controls on airport siting and use.

B. Keep the Decisionmaking Responsibility and the Concomitant Liability for Airport Operations with State and Local Governments. The federal government has not and should not be in the business of siting, building and operating airports. Traditionally, the role of airport developer and operator has been with *local* government, assisted by federal financial assistance. As a result of the central development role of the local airport proprietor, liability for personal injuries and property damage caused by caused by noise from aircraft using the airport has rested with the local municipality -- *not with the federal government*. *Griggs v. Allegheny County*, 369 U.S. 84 (1962). See also *Greater Westchester Homeowners Association v. City of Los Angeles*, 26 Cal.3d 86, 160 Cal. Rptr. 733, 603 P.2d 1329 (1979), *cert. denied*, 449 U.S. 820 (1980); *Baker v. Burbank-Glendale-Pasadena Airport Authority*, 39 Cal.3d 862, 218 Cal. Rptr. 293, 705 P.2d 886 (1985), *cert. denied*, 475 U.S. 1017 (1986); *Owen v. City of Atlanta*, 157 Ga. App. 354, 227 S.E.2d 338 (Ga. App. 1981), *aff'd., City of Atlanta v. Owen*, 248 Ga. 299, 282 S.E.2d 906 (1981), *cert. denied*, 456 U.S. 972 (1982); *Krueger v. Mitchell*, 112 Wis.2d 88, 332 N.W.2d 733 (1983); *Ursin v. New Orleans Aviation Board*, 506 So.2d 947 (La.App., 5th Cir. 1987). And under most – if not all airport leases –

that liability has been imposed on the airlines under indemnity clauses. Thus under our present system, liability for aircraft noise injuries lies ultimately where it should -- with the airlines who profit from airport operation.

Concomitant with this central role of local proprietors in our airport development system, there are several ancillary principles which must be recognized:

1. **Recognize the Role of the States.** Congress should acknowledge the Constitutional authority of the States in airport development and operational control. Most local proprietors of major urban airports are not private entrepreneurs, but municipal governments which are political subdivisions of the states. While *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973), held that a non-proprietor could not use "police power" to regulate airports, nothing in *Burbank* addressed the role of the states as the creator and authorizing entity for the acts of its political subdivisions. Unless we in Congress are prepared to invade ever further into roles left by the Constitution to the States, we should not -- indeed we constitutionally cannot -- dictate the relationship between the state and its political subdivisions. This reality should lead to a recognition of the authority of the states to expand, contract, limit, or even take away the authority of the municipal airport proprietor to build and operate an airport. Given such authority the states can play a central role in developing new airports and in controlling the noise problems of old airports. Recognition of this point is important because some municipal airport proprietors -- notably Chicago -- have considered themselves immune from state control. Since this rogue status has as its basis a misinterpretation of *Burbank* -- and more importantly of our Congressional intent. The Congress should clear the air on this issue and declare no Congressional intent to oust states from their traditional Constitutional role in shaping the authority of their political subdivisions.

2. **Protect the Rights of Noise Victims to State and Federal Damage Remedies for Personal Injury and Property Damage.** Congress should recognize and protect the rights of airport neighbors suffering noise injury to recover compensation for personal injury and property damage under our federal and state law structures. Ideally, this means that Congress should: a) declare its intent that

state law remedies for personal injury and property damage from noise not be preempted; and b) adopt a statute of limitations for a *Griggs* taking action under the Fifth Amendment which follows the parallel state statute of limitations for a state constitutional action for a taking.

3. **Rebuff Current Industry Attempts To Preempt State and Local Authority.** Congress should refuse to preempt state and local controls over noise at airports. Currently an industry group sponsored by the FAA is proposing that Congress should preempt all noise controls of Stage III aircraft by local airport proprietors. It is clear -- and even the industry seems to acknowledge -- that airport proprietors currently have that authority and are not preempted under federal law. This critical proprietor authority should not be preempted for at least two reasons. First, it would transfer liability for federal and state personal injury and property loss damages from the proprietor (and the airlines under airport indemnity clauses) to the federal taxpayer. We can't afford to pay our own current federal obligations -- let alone a new multi-billion dollar bailout of the airport proprietors and the airlines. Second, by transferring liability for federal and state personal injury and property loss damage claims from the airports and airlines to the federal government, we will have established yet another complex hoop for injured victims to jump through to obtain the compensation to which they are entitled under state and federal law. The danger here is that -- even more so than under the existing state of confusion -- the victim and his or her rights will slip through the cracks and receive no relief.

C. **Replace the Part 150 Program.** Congress should consider replacing the current "Part 150" program with a federal recognition of the existing power of the states to develop state law programs for control of: a) airport operations; and b) the land surrounding airports. The current Part 150 program has been an exercise in futility in many areas of the country. In many instances the airport operator -- beholden to the airlines -- has simply offered the *status quo* (i.e. continued serous noise problems) as its Part 150 Program. Variants of this approach are to move the noise around with such devices as preferential flight paths or to move residents out of the impacted area -- at no time significantly reducing the noise.

The key to an effective program is for Congress to recognize and declare what the law already is. The states already have authority to regulate

airport proprietors who are political subdivisions of the state and thus have authority to regulate and restrict noise at airports operated by the state's political subdivisions. Congress should simply extend that authority to those few instances where the major operator is not a political subdivision.

Moreover, the states already have ample authority to control land use decisions by their political subdivisions. No further federal law is needed and any such federal law -- which intrudes on a policy making area traditionally left to the states (i.e. land use) -- should be discouraged.

The central point which must be recognized is that any exercise of state power to regulate land use around airports must be accompanied by a parallel exercise of state power to control airport operations.

Finally, it should be recognized that land use controls in already developed urban areas around many of today's major airports will provide little relief. These airports were badly planned and currently overload what little land buffers may have been provided. The key to marrying the goal of increasing airport capacity with significant noise relief lies -- not in jamming more flights into already over stressed airports -- but in rapid development of environmentally sound new airport capacity built from scratch with significant environmental buffers.

D. **Focus on Construction of New Environmentally Sound Airport Facilities.** It is clear that the current focus by the airlines and airport proprietors on jamming more flights into already overtaxed facilities will lead us to environmental and air transport gridlock if we attempt to rely on these aging congested facilities to meet future demand. The answer to our current and future overload lies in the construction of new environmentally sound (i.e. large land buffered) airport facilities to supplement and -- where appropriate -- replace existing congested noisy neighbor facilities. Certainly one of many roles for these new airports should be to off-load excess traffic from overloaded, congested, noisy existing facilities. Congress' role here should be four-fold:

1. Congress should develop incentive programs for the states to develop new environmentally sound green-field sites.

2. Congress should establish minimum environmental requirements for such sites so that new O'Hares are not created.

3. Congress should limit the growth in operations at existing congested and noisy sites. Such limits -- which would not preempt local limits at lesser levels -- would create an incentive for new airport construction.

4. Congress should develop financing mechanisms -- such as the passenger facility charge -- which will allow states to finance such new facilities at the most environmentally desirable location in the areas to be served.

Mr. OBERSTAR. I would like to tell the panel members, the reason you are here is Henry Hyde's persistence on this noise issue. Practically the first word he said to me in my assuming the chairmanship of this subcommittee, "When you do something about noise, I have a whole group of constituents who wish to be heard." It wasn't "will you" or "if you," but "when you do it." That is why you are here. He has been persistent on this matter. Henry is difficult to resist.

Please proceed.

TESTIMONY OF HON. MARTIN J. BUTLER, MAYOR, CITY OF PARK RIDGE, ILLINOIS, AND CHAIRMAN, SUBURBAN O'HARE COMMISSION; HON. JOHN C. GEILS, PRESIDENT, VILLAGE OF BENSENVILLE, AND VICE CHAIRMAN, SUBURBAN O'HARE COMMISSION; AND JOSEPH V. KARAGANIS, COUNSEL, SUBURBAN O'HARE COMMISSION

Mr. BUTLER. Thank you very much.

I am Marty Butler, Mayor of the City of Park Ridge, a community of 39,000 people. We are about 120 years old. I live in a home that is 70 years old.

One of the problems all of us have to face is that the noise and pollution being generated by O'Hare field is slowly devastating all of the communities in the area of O'Hare.

As Henry mentioned, I am also Chairman of the Suburban O'Hare Commission, which is an organization of some 13 communities. Most of our residents—those residents are included in the 400,000 people who are directly impacted by noise exceeding the 65 LDN noise contour surrounding O'Hare.

Mr. OBERSTAR. I am familiar with that commission from my hearings in Chicago.

Mr. BUTLER. We should mention, and I always make a point of doing this, Mr. Chairman, that there were 219,000 people living in the vicinity of O'Hare in these 13 communities before the first jet plane flew. I mention this because the airlines and the FAA, in particular, are always quick to charge our communities were created because of the jet plane, not despite them.

Now you have, as you mentioned, you do have our statement. Let me just pick out two points to highlight.

First of all, I believe that the Federal Government's failure in many of the areas which directly impact the noise problem is a direct contributing factor to the problems themselves. Let me highlight two.

First, failure to acknowledge the role of the states. Current federal noise policy fails to clearly recognize the role of the states in the development and operation of airports and in the control and in the prevention of noise injury to airport neighbors.

Under our constitutional system, the states are the creators. They are the shapers of municipal authorities which operate most of the major airports. We believe it is time for the Federal Government to acknowledge the power of the states in shaping and controling airport development and operation.

Number two, failure to protect the legal rights of noise victims. Current federal aviation policy fails to protect the rights of citizens

injured by aircraft noise to recover compensation for their personal injuries and property damage under state and federal law.

Though the right to recover such damages is clear, airport proprietors and airlines have used Congress' lack of a clear statement on this subject to stymie critically needed compensation for victories, or victims of noise injury. In fact, some airport operators and notably those we face in Chicago continue to argue that Congress has somehow eliminated or otherwise precluded damage recovery. These are very spurious claims, in our estimation.

Rather than just give two complaints, let me make two suggestions. First, we would suggest that the Congress keep the decision-making responsibility and concomitant liability for airport operations with state and local governments. The Federal Government has not and should not be in the business of siting, building and operating airports.

Traditionally, the role of developer and operator has been with local government, assisted, of course, by federal financial assistance. Therefore, liability for personal injuries and property damage caused by noise from aircraft using the airport has rested with the local municipality. Under most airport leases, that liability has been imposed on the airlines under indemnity clauses. That certainly is the case in O'Hare.

Liability of aircraft noise injuries lies ultimately where it should, with the airlines who profit from airport operation.

Let me add just a couple more items. Recognize the role of the states. That is our plea to the Congress. Congress should acknowledge the constitutional authority of the states in airport development and in operation control. Congress should not dictate the relationship between the state and its political subdivision.

This is important to us because some municipal airport proprietors, and notably those we face in Chicago, have considered themselves somehow immune from state control.

Our hope is that the Congress will protect the rights of noise victims to state and Federal damage remedies for personal injury, and also for property damage.

Congress should recognize and protect the rights of airport neighbors suffering from noise injury to recover compensation for personal injury and property damage under our Federal and state law structure. Ideally, this means that Congress should declare its intent that the state law remedies for personal injury and property damage from noise should not be preempted.

Secondly, please rebuff current industry attempts to preempt state and local authority. Congress should refuse to preempt state and local controls over noise at airports. Currently, an industry group sponsored by the FAA is proposing that Congress should preempt all noise controls of States' free aircraft by local airport operators.

It is clear, and it seems that the industry acknowledges this, that airport proprietors currently have the authority to impose noise controls and are not preempted under Federal law. This critical proprietor authority should not be preempted.

It would transfer liability for Federal and state personal injury and properly lost damages from the proprietor and the airlines under airport indemnity clauses to the federal taxpayer. And by

transferring that liability for Federal and state personal injury and property loss damage claims from the airport and airlines to the Federal Government, Congress will establish yet another very complex hoop for injured victims to jump through.

John Geils has a couple of points to make.

Mr. OBERSTAR. Thank you very much, Mr. Butler.

[The prepared statement of Mr. Butler appears on p. 133.]

Mr. OBERSTAR. Mr. Geils.

Mr. GEILS. Thank you, Mr. Chairman, gentlemen of the distinguished panel. Again, thank you very much for giving us an opportunity to testify before you this afternoon. I would just like to make a couple of points.

I am the President of the Village of Bensenville, as Congressman Hyde introduced me earlier. Bensenville is over 100 years old and has a population of 117,000 people. We feel the airport came to us, not the other way around.

One of the biggest problems that we face, as Mayor Butler alluded to, is the Federal Government's failure to acknowledge the legal role of state and local governments in the area of noise regulation. We constantly battle the city of Chicago and the FAA in an attempt to have them recognize that under our Constitution, state and local authority has been preserved.

The Federal Government's failure to clarify this issue is a contributing factor in many of the problems with current Federal aviation noise policy.

As vice chairman of the Suburban O'Hare Commission, I also serve as a representative of the National League of Cities on the airport noise working group, which is charged with making recommendations to the FAA capacity task force. Again, the failure of the Federal Government to make a clear statement regarding the preservation of state and local authority has been a major source of problems and controversies for the working group.

As was enumerated earlier, there are many problems with the Federal Government's current aviation noise policy, but for the sake of time I would like to highlight two of these. I would like to take that opportunity to do this at the present time.

The first is the failure to distinguish land use concerns between existing urbanized sites and green-field new sites. Current federal aviation noise policy fails to distinguish between new airport construction or expansion in unpopulated rural areas and airport operational expansion in densely populated urban areas such as the area around O'Hare.

Federal programs which encourage or require local airport sponsors to prevent incompatible land use are of little use and indeed often counterproductive when applied to established areas such as the longstanding communities surrounding O'Hare.

In our communities which have been established for generations, it is both unsafe, something that has not been emphasized enough in the hearings today, and unsound to allow industrial and warehouse operations to be "infilled" into existing residential neighborhoods. This is what the policy of the FAA Encourages us to do.

Land-use controls may be wonderful when building a new airport in a green-field site with a major land buffer. Such controls are un-

acceptable in communities which have been established for over a century.

We will not permit our established residential areas to be forced to become commercial or industrial wastelands in order to become compatible with the airport.

Another thing that I have heard all during the afternoon is it appears to me an attempt by the FAA and the airlines to jam more operations into old airports, increase the capacity without direct regard for the environmental safeguards that need to go along with this.

I also think it leads to another problem. That is the failure to focus the federal effort on new environmentally sound airport construction. Little effort is being made to urge the construction of these new sound airport facilities built from the start with environmental protection of their neighborhoods as a central goal.

In our area a state study to select a site for a new regional airport, being funded by the Federal Government, has been moving slowly along for several years against the opposition of the city of Chicago, the proprietor of O'Hare Airport, the airlines, even some members of the FAA. It is time that the Federal Government get moving and encourage the development of a new major airport for the Chicago area.

As a related issue, we need the Federal Government to once and for all declare there will be no more runways at O'Hare Airport. The surrounding communities have suffered enough. As Mayor Butler alluded to again, already 400,000 people live, work, worship and attend schools in the area in which the Federal Government has branded as suffering from excessive noise.

In addition, the traveling public suffers from the lost margin of safety in an airport where controllers are expected to pack over 800,000 flights a year into an already overcrowded airspace. Yet, the city of Chicago wishes to add two more runways and another 300,000 flights a year to that same airspace.

A statement from the FAA that no more runways would be built at O'Hare is long overdue.

Another related issue is the use of the high density rule at O'Hare and other major airports. It limits the number of operations in peak hours for safety reasons.

Some Members of Congress along with the airline industry recently have sought to lift the high density rule. For those of us near O'Hare, this is a frightening prospect. Our skies are already dangerously overcrowded. The number of near misses grows annually.

Lifting the high density rule will threaten the safety of those who fly through O'Hare and those who live beneath its flight paths. We urge you to oppose any attempt to undermine this rule.

Having stated these two criticisms of the national policy that affects our communities, let me offer some suggestions on what the Federal Government can do to help solve these particular problems.

With respect to land-use control, we are asking you to replace the part 150 program. I had an interesting informal conversation during the afternoon with an airline representative. She highlighted and responded to the 150 program in a very interesting way.

She said 150 programs are there only to make consultants rich and don't—at the expense of the Federal taxpayer—and don't accomplish any of the mitigated objectives of reducing aircraft noise and addressing safety.

Congress should consider replacing the current part 150 program with a Federal recognition of the existing power of the states to develop state law programs for control of, (A) airport operations and (B) the land surround airports. For example, at O'Hare the part 150 study is an exercise in futility with the city of Chicago offering only to move noise around rather than to reduce the noise problem.

We need a federal policy which does not attempt to intrude on a policy-making area traditionally left to the states.

Land use: The central point which must be recognized is that any exercise of state power to regulate land use around airports must be accompanied by a parallel exercise of state power to control airport operations.

Finally, it should be recognized that land-use controls in already developed urban areas and many of today's major airports such as O'Hare will provide little relief. O'Hare was badly planned and is already overloaded. There simply is no land buffer. We cannot jam any more flights into O'Hare. Instead, we just rapidly develop an environmentally sound new airport, go from scratch with significant environmental buffers.

Secondly, focus on construction of new environmentally sound airport facilities, our second remedy. It is clear that the current focus by the airlines and airport proprietors on jamming more flights into already overtaxed facilities will lead us to environmental and air transport gridlock if we attempt to rely on these aging, congested facilities to meet future demand.

The answer to our current and future overload lies in the construction of new environmentally sound, large land buffered airport facilities to supplement and where proper, replace existing congested noisy neighborhood facilities. Certainly one of the new roles for these new airports should be off-road excess traffic from overloaded, congested noisy, existing facilities.

We suggest that Congress' role here should be fourfold. One, Congress should develop intensive programs for the states to develop new environmentally sound green-field sites.

Two, Congress should establish minimum environmental requirements for such sites so that new O'Hares are not created.

Three, Congress should limit the growth and operations that exist in congested and noisy sites. Such limits, which would not preempt local limits at lesser levels, would create an incentive for new airport construction.

Finally, Congress should develop financing mechanisms such as the passenger facility charge, which will allow states to finance new facilities at the most environmentally desirable location in the areas to be served.

Thank you very much for giving me this opportunity this afternoon.

[The prepared statement of Mr. Geils appears on p. 165.]

Mr. OBERSTAR. Thank you. It is very thoughtful consideration, similar to those included in Mr. Hyde's statement.

Mr. Karaganis.

Mr. KARAGANIS. I have little to add to the statements that have been made other than to suggest, because, again, under our constitutional structure there should be, and most courts have expressed the facts and we have given you ample citations of authority in the material we have given you, that there are state remedies, damage remedies for personal injury and property damage.

Let me give you an example. I represent Du Page County School District as a special assistant to Du Page County state's attorney. The airlines would have you believe we have schools that aren't covered by the 150 program, aren't within the 65 LDN contour where kids can't read, can't talk, can't take their lessons. We need to sound-proof them.

We have brought litigation similar to litigation brought in California where they have successfully used the state nuisance law to obtain sound-proofing funds from the operator of the Los Angeles International Airport. They settled the case and they got their schools sound-proofed, all without benefit of the need for Federal taxpayer dollars, all without the need of Federal intrusion.

The airlines said, "No, let's limit these people to a Federal rigs type taking claim." One, the first thing the judge said is that a taking claim is limited to the diminution in property value to the school. That won't cover sound-proofing money.

We need state law remedies. We think we have them under existing law, but the airlines and the airports have used or attempted to use the claim that Congress has somehow silently preempted the ability of airports to control the noise and silently preempted the concomitant damage remedy. We are facing the inability to recover these funds.

You will hear proposals, I am sure, to shift this liability to the Federal taxpayer. One, I raise a serious question as to whether the Federal taxpayer should bear this liability through some kind of preemption mechanism.

Two, I suggest to you that as a lawyer who brings these claims in the courts for school districts and others, what do we do? Do we knock on the court of claims' door here in Washington? What do we do when the Federal Government says, "You have no claim under state law against the Federal Government. At most you have a Fifth Amendment ticket claim," which leaves our schools and home unsound-proofed, which leaves us without effective remedies.

We think the existing system provides us protection, legal protection. We would ask Congress to clarify that legal protection.

We know that the twin points of the ability to control noise and liability go hand in hand. We ask that be left with state and local government.

There was a suggestion. One of the things, working with the circuit courts of appeal and the United States Supreme Court and the Federal district courts on these issues, I am sure you are aware of the attempts to read the tea leaves, what did Congress really intend?

Everybody goes through mental gymnastics to try to figure out what you intended. We think you want to preserve these remedies for the victims. We also think the burden of paying for that damage should be with the people who benefit, namely, the airline and the air traveling public. That needs to be stated clearly.

Let me also suggest that as a lawyer for clients who lived with airport noise, think about the proposal, think hard about the proposal. Instead of making one or more segments of the traveling public or the impacted community losers in this process, we have suggested to you a way to make everybody a winner.

We think by making everybody a winner the appropriate attack is as follows. These mayors who have been suffering from airport noise have been the leaders in the development of new airport capacity in the Chicago metropolitan area. They have been one of the most aggressive advocates of a new environmentally sound third airport which would not only take care of the growth that we need and want in environmentally sound ways, but also be able to offload some of the congestion from places like O'Hare. There are analogies in the East and certainly analogies in the West.

We are not trying to stop air progress here. We are trying to foster air progress, but in an environmentally sound way.

We think with the program points we have alluded to, and we are more than willing to be at the beck and call of the committee on any further information you would request, Mr. Chairman, with respect to any of the points or any additional information you would like.

We think that there can be a program where everybody wins and the current confusion that exists can be eliminated by the action of this committee.

Thank you.

Mr. OBERSTAR. Thank you very much.

Your testimony collectively and individually has been very much to the point of the inquiry of this committee, and your several suggestions, issues to focus on have been most helpful to guide our thinking as we go through it.

I might just simply say that point E, failure to break airlines antitrust financing stranglehold, has already been addressed in the bill that passed the House just before the August recess. That is the airline safety capacity enhancement bill which Mr. Hyde helped us with.

We have a provision in that bill on the passenger facility charge that gives airport authorities the power to build new gates or build new airports without the veto of the air carriers. That, I think, is the most significant advance in competition in consumer benefit since the enactment of deregulation in 1978.

So when that becomes law we will have addressed one of your major concerns?

Mr. KARAGANIS. Can we tell you one of our local problems? We have no vested interest. We think that an environmentally sound third airport should be built.

I know the Congressmen held hearings in our area about this. The bill presently left the House and makes that money available for only one of those sites.

Mr. OBERSTAR. It doesn't have any specific reference to a site.

Mr. KARAGANIS. As we understand the bill that has been discussed in our local papers, Mr. Chairman, and maybe you can clarify it for our media, the bill we have been told is tailored to a site selected by the city of Chicago.

Mr. OBERSTAR. No.

Mr. KARAGANIS. We had hoped this money would be available.

Mr. OBERSTAR. There is no site-specific reference in the bill whatsoever.

Mr. KARAGANIS. Then I am misinformed or misunderstand.

Mr. OBERSTAR. Somebody has done a great disservice. The language is very clear. It is not for this committee, it is not for the Congress to determine location. There was no such amendment offered. Had such an amendment been offered, I think Mr. Clinger and I both would have vigorously opposed it.

Mr. KARAGANIS. I stand corrected.

Mr. HYDE. That is good news.

Mr. OBERSTAR. Mr. Clinger, questions?

Mr. CLINGER. Thank you.

Mr. Karaganis, just one question.

In the 1987 Re-authorization Bill that we had, we did include a provision in there, I think this was largely Mr. Hyde urging this that would say that regardless of whether a Part 150 study had been done that we would allow the use of AIP funding for soundproofing schools specifically in the Chicago area.

Ms. KANE. Yes.

One of our difficulties, and you have heard testimony on this about the so-called 65 LDN problem, we have schools regularly affected, very adversely affected because the total number of hours doesn't add up to the energy level that puts them within the 65 LDN computer model, there go the federal funds. We need our remedies.

The same thing is true of many households. You have heard of ample testimony here today. There is something that doesn't sit right with these computer projections which don't tract what is the real experience of people.

There are people in Bensenville who live across the street from another. One person is under the hazard housing of the 65 LDN. The other one is thinking he has no noise because the contour tells him he doesn't except the planes flying over head.

Mr. OBERSTAR. Is this a totally useless thing?

Ms. KANE. No, not at all. There have been a number of schools soundproofed within this 65 LDN contour.

It goes a long way to solving some of our more immediate problems, but there are other problems out there that we don't think the federal taxpayer should have been responsible for.

We think the airlines and the airport operator should be responsible for.

It would be outside the context of the existing 150 program.

Mr. CLINGER. The Aviation Authorization bill which we just passed out of the House here which set aside, continued to set aside 10 percent of AIP funding for noise abatement projects, that would be, roughly, $180 million.

Do you think that—how do you feel about that?

Ms. KANE. You have asked the question. I will try to give you a candid response.

We are worried about that money because it historically has been used for buy-outs. It is one thing to talk about a little buy-out on a little patch of land near an airport. We are talking about several tens of thousands of homes here.

If you played the buy-out game around O'Hare, you would be ripping up the heart of Park Ridge, Illinois, ripping up the heart of Bensenville.

We think the social fabric of our communities is so important that there is a danger to that money. It needs to be carefully restricted as to how it is used. That is where we come back to the role of the states. Chicago is a creature of the State of Illinois. Park Ridge is a creature of the State of Illinois. So is Bensenville.

We think the states can have a significant role in the two-pronged area of airport control and land use control around the airport, plus the third element that the Chairman held hearings about, which is the siting of new airports and the development of new airports.

We think the state role becomes very important and might allow the Federal Government to sit back and say here are the incentives. You go down the job.

Mr. CLINGER. I want to thank all of you for your excellent testimony. We have no intention to try to dictate where that site would be or would put any conditions on it.

Ms. KANE. Thank you.

Mr. OBERSTAR. I am glad to see your reference to land use and the distinction between settled cities around which, or within which airports have been developed and Greenfield areas.

It is an important distinction. But land use is a very, very important part of this picture.

Local governments insist on their authority, their responsibility for making those decisions which are closest to the people.

Yet, when local government fails to exercise its responsibility to keep people out of the noise foot print of airports, then we have to wonder how serious is local government about this job?

In many areas we have this problem, where it is recreational activities, for instance. Along the North Shore Lake Superior in my district, there were folks furious with National Wilderness Designations and National Park Designations, when coastal zone management came along, they said we don't want that federal money, we don't want anybody, we don't want to even tell ourselves how to zone.

Fifteen years later they wish they had the money, they wish they were able to do the zoning. Now they want to do it.

Things have happened that are irreversible. I appreciate the distinction.

I want to say when we get to formulating the policy, local land use responsibility is going to be a very big and very important part of it. We are going to put heavy responsibility along with the authority that you want to exercise.

Mr. BUTLER. Mr. Chairman, I think you made a key distinction. That is the Greenfield versus the urbanized area that we experienced in the O'Hare area. Those 219,000 people who probably lived in—there were 100,000 homes in place the day the first jet plane flew.

My own community was probably 80 percent developed before the first jet plane flew. We did not have large areas. We had a lot here, two lots there.

As I think John alluded to, we could not fill with a warehouse in the middle of an established residential area. That was an impossibility. It would have been a travesty on that community.

If the bill, legislation can make that distinction, I would agree with you totally.

Mr. OBERSTAR. We will look to your help and your further guidance. I know we will have Henry Hyde's participation along the route.

Ms. KANE. Mr. Chairman, and Members of the committee, we would like to thank you for lasting as long as you have during this long day.

I know it has been a burden on you trying to get the votes and hearing all these people. We appreciate it very much.

Mr. HYDE. Not only is your endurance remarkable, but Mr. Anderson, the very distinguished authority on aviation, came into hear the testimony, for which we are very gratified.

Mr. ANDERSON. I will always try to listen to Henry Hyde.

Mr. HYDE. Thank you.

I wish my wife felt as you did.

Mr. OBERSTAR. Thank you.

Our final witness today is the Honorable Jeffrey Kellogg, Vice Chairman of the City of Long Beach, who arguably has traveled the greatest distance to be here.

Welcome, Mr. Kellogg.

TESTIMONY OF JEFFREY KELLOGG, VICE MAYOR, CITY OF LONG BEACH, AND CHRIS KUNZE, AIRPORT MANAGER, CITY OF LONG BEACH

Mr. KELLOGG. Good morning, good afternoon, good evening.

Mr. OBERSTAR. We are counting on you to be the clean up batter for today.

Mr. KELLOGG. I am probably the speaker you have been waiting for.

Mr. OBERSTAR. We are waiting to hear something that we have not heard about all day.

If the FAA has really listened to someone, participated, heard your concerns.

Can you tell us that? We will drop the gavel and close the hearing.

Mr. KELLOGG. I thought you were going to ask me about my wedding or something.

Mr. OBERSTAR. Let me call on the Chairman of the full Committee on Public Works and Transportation and the first Chairman of the Subcommittee on Aviation, the gentleman from California, Mr. Anderson.

TESTIMONY OF HON. GLENN M. ANDERSON, A REPRESENTATIVE FROM CALIFORNIA

Mr. ANDERSON. Thank you.

Thank you, Mr. Chairman.

Let me start off by first thanking Mr. James Oberstar and Mr. Bill Clinger as well as the rest of the subcommittee Members for

all of their efforts on this series of hearings and for addressing an issue that is important to this Nation.

Airport and aircraft noise is a problem, particularly when airports are surrounded by residential communities as is the case with Long Beach Airport in my district. There are many factors that contribute to airport noise.

I feel it is important that Congress visit the federal noise policy to determine what changes may be warranted. I know that at my airport I have been working with the United States Marshal Service to try and alleviate the noise caused by the use of Boeing 727 aircraft during periods of time reserved for quieter, smaller aircraft.

In addition, noise concerns have been the primary obstacle in negotiating increased flight schedules at the Long Beach Airport over the past several years.

With this in mind, I would like to welcome Mr. Jeffrey Kellogg, the Vice Chairman of the City of Long Beach, and Mr. Chris Kunze, the Long Beach Airport Manager.

It is a pleasure to have the two of you here to testify before the subcommittee, thereby highlighting the problems faced by my particular constituency in Long Beach.

Both of these individuals are extremely well versed on this issue and have done an exceptional job trying to alleviate the airport noise problems faced by Long Beach.

I wish to offer my special thanks to Vice Chairman Kellogg for testifying today, who I understand has put his marriage plans on hold until after this testimony. That is not too bad.

I welcome both of you here and look forward to receiving your input. At the appropriate time I do have a few questions I would like to ask.

Mr. OBERSTAR. Thank you very much, Mr. Chairman.

You have been appropriately and properly presented to this committee, Mr. Kellogg.

Please proceed and introduce your associate.

Mr. KELLOGG. Thank you, Mr. Chairman.

Mr. Chairman, and Members of the Committee, the City of Long Beach, like many airport operators, is keenly interested in the issue of noise.

The city has long been active in developing relations intended to reduce the impact of noise on the surrounding community.

The city is also involved in litigation with homeowners living around the airport who assert that noise from aircraft operations have damaged their properties by reducing them in value.

Long Beach has successfully defended one set of suits in this area, but lawsuits involving over 700 individual properties remain to be tried.

As a result of the regulations we have enacted, particularly those establishing fairly strict single event noise limits, our airport is not served only by stage 3 aircraft.

This has been a significant difference in the overall noise at the airport. While many of the present flights have been court ordered, in 1979 there were approximately ten air carriers flights by stage 1 and stage 2 airplanes and the very large 65 CNEL noise impact area plus some 70 CNEL noise impact area.

Today with 42 air carrier flights carrying over a million passengers a year, there is only a very small 65 CNEL impact area and the 70 CNEL area is within the airport entirely. As a consequence, the city certainly endorses a policy which would result in the elimination of stage 2 aircraft from the fleet.

Such a policy, however, would not have any direct effect on the City of Long Beach since our airport is already stage 3.

The biggest concern of the city is to maintain the right of individual local airport operators to adopt noise control regulations to protect the surrounding communities.

We believe as explained in detail in the comments we have filed with the committee, that the law overwhelmingly supports the notion that airport operators presently have a right to impose noise regulations.

Control of noise is a unique local concern. The airport operators have liability for the noise and, therefore, the need to manage noise to control the liability.

It is also the closest problem and therefore the best able to understand and balance the needs of the community and the needs of the airport.

What is important to me, to the elected officials and to the City of Long Beach as a whole is that an important area for local authority to be able to retain control. That is our concern and that is our desire. Local regulations are challenged on the basis that they impair the flow of interstate commerce in some way.

It is said in some areas local regulations reduce the capacity of airports. Without some critical mechanism to control the noise at the airports, communities surrounding the airports will oppose any significant expansion in capacity.

While local noise regulations may be criticized for limiting capacities, the ability to enact such regulations to control the noise of aircraft operations is necessary for there to be any significant expansion in capacity in years to come.

My experience in the local community is that the people feel they can at least make personal contact with their local officials on an every day basis. As a result, local regulations are those who have the most credibility with the local community.

If I am to leave you with one thought, it would be that the City of Long Beach believes that those of us who operate airports and are responsible for the noise that comes from them need to maintain the ability to regulate that noise.

Absent a credible system of noise regulations, there will be no expansion in capacity.

Mr. Chairman, I would like to thank you for taking the time, Members of the committee.'

Mr. Chris Kunze, our airport manager, or myself will be available for any questions.

Mr. OBERSTAR. Thank you very much for so thoughtfully and faithfully summarizing your testimony .

It reflects the total document that you submitted.

Your document, almost unique in today's testimony, reflects the questions raised by the committee in our invitation to witnesses.

You have addressed these matters with depth and careful thought. I appreciate that.

In the California case involving lawsuits against airports for noise impact using the nuisance laws, were any standards established to determine damages?

Mr. KELLOGG. Mr. Chairman, I am going to let, as I told Mr. Kunze when he came here, any tough questions, I am going to turn to the staff and let him answer it.

Mr. KUNZE. Mr. Chairman, though I am not an attorney, my understanding is that, yes, two different standards have been applied to the nuisance theory. One is that absent noise in excess of 65 CNEL, there is no nuisance found. Also, I believe that they have applied basically a period of, I think, 100 days upon which to file a lawsuit, a nuisance lawsuit in order to collect for that period of time.

I believe those are the two standards that have recently been established.

Mr. OBERSTAR. Is the airport's liability limited to property value loss?

Mr. KUNZE. Again, if those standards for nuisance are not met, yes, the property loss would be the other side of the liability.

Mr. OBERSTAR. Okay.

What local or city ordinances are in effect concerning land use near or in the vicinity of the airport?

Mr. KUNZE. Generally, as has been the case, I guess, with a lot of the other testimony today, the Long Beach Airport and the community around it basically grew at the same time through the 1930's and 1940's. The zoning was established years and years ago.

We have a situation now where the airport is basically surrounded with incompatible uses. Those came into place during the 1930's and 1940's. We have very mature neighborhoods right now.

Mr. OBERSTAR. Does an independent authority operate the airport?

Mr. KUNZE. No. The land use and the airport are both controlled by the City Council, City of Long Beach.

Mr. OBERSTAR. The city council is the airport operator in effect?

Mr. KUNZE. That is correct.

Mr. OBERSTAR. And also the regulator of land use?

Mr. KUNZE. That is correct.

Mr. OBERSTAR. Is there a conscious, deliberate effort, or has there ever been one to say no, we can't allow that housing development to go in this area because that is right in the flight path of the airport?

Mr. KUNZE. There really has not been that opportunity. We don't have any new developments around the airport. As I mentioned, basically all the housing stock in the impacted areas was created during the 1930's and 1940's.

Mr. OBERSTAR. What is there is what you got, and you don't have opportunity for new relations similar to the O'Hare Airport situation where the airport is in an urban setting and you can't do much about it?

Mr. KUNZE. That is correct.

Mr. OBERSTAR. Thank you

Chairman Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman.

I have three questions for Mr. Kellogg.

The Honorable Jeffrey Kellogg is the Vice Chairman of the City of Long Beach.

Jeff, your testimony suggests that you have serious difficulties in working with the Federal Aviation Administration to develop a noise abatement program under Part 150 of the FAA's regulations. Do you have any suggestions for improving the Part 150 process?

Mr. KELLOGG. Mr. Chairman, because when this process with the Part 150 study, Chris Kunze was involved with it, so I will let Chris answer that one, another tough question he gets.

Mr. KUNZE. Thank you.

Mr. Chairman, Members, we conducted our Part 150 study over a two-year period. We had 43 separate meetings which were attended by a task force, very broadly composed task force of community and user group members.

There was an FAA representative who faithfully attended each of these meetings. However, did not participate in a formative sense.

The city's submittal to FAA in support of our adopted noise compatibility program was over 1,200 pages in length.

The FAA rejected most of the city's part 150 proposals, stating inadequate showing of need for the controls or inadequate definition of impact on interstate commerce of the proposed controls.

Thirdly, the city felt its documentation to be adequate. It would have been very helpful to us if either, number one, the FAA could have provided what I would call developmental or formative feedback during the process regarding what review criteria and standards they felt appropriate or if they had formalized in advance the review criteria and standards and/or provide for formative examples of parallel part 150 submittals which were deemed acceptable by the agency.

Neither of these were done, so the, we were basically proceeding on our own without direction in terms of what kinds of substance the FAA needed to evaluate the various control proposals.

So although they did participate with us, it was basically a nonparticipatory participation. They sat with us and didn't really constructively help until after the submittal.

They then told us they felt it was inadequate.

Mr. ANDERSON. Thank you, Mr. Kunze.

Mr. Kellogg, I have another directed to you.

A bill introduced in the Senate yesterday prohibits airports from restricting operations with stage 3 aircraft and provides that the Federal Government will be liable for damages caused by an airport's inability to restrict stage 3 operations.

I would appreciate your comments on this proposal.

Mr. KELLOGG. I will let Mr. Kunze once again.

Mr. KUNZE. In our experience, a mere limitation of stage would not permit us to achieve our local objective of no sensitive land use within the 65 CNEL or LDN impact area, which is consistent with state and federal guidelines.

We currently have a small impact area, and a significant expansion of the number of stage 3 flights, all else held equal, would clearly worsen the impact.

Also, due to the closeness of sensitive land uses to our airports, including churches and schools, both single event noise level con-

trols, especially at night, and especially controls on the frequency of any stage 3 generated noise intrusions is significantly problematic in our community.

That is why our program for ensuring compatibility includes CNEL or LDN controls, single event noise level controls and also intrusion frequency controls.

As Vice Chairman Kellogg stated, viability is one issue, but quality of life in our community is also a tremendous concern to us which wouldn't be addressed by a federal assumption of liability.

Finally, we would certainly hope that any legislation of this sort would provide a grandfather provision so as not to invalidate all of the community's efforts over the past decade towards evolving a noise compatibility program which allows for increased flight activity as well as reasonably protecting the surrounding community.

Mr. ANDERSON. Thank you, Mr. Kunze.

My last question, Mr. Kellogg, is could you tell us what restrictions are now imposed on airline operations at your airport and give us the background as to why these restrictions are needed?

Mr. KELLOGG. Mr. Chairman, the City of Long Beach has in place an interim ordinance. The City of Long Beach has been involved in litigation since 1983, when the airlines sued the city to gain more flights. Since that point in time a federal judge has ordered us to come back with an interim ordinance which we do have.

It allows us during the daytime hours from 7 o'clock in the morning until 10 o'clock at night aircraft can fly in if they meet certain standards.

The airport is never closed. From 10:00 at night until 7:00 in the morning restrictions are such that no major aircraft can fly in there.

Small private general aviation can come in and out of the airport. These all came about essentially because the airport and probably not more than two years ago identified the opportunity to sit in Chairman Oberstar's with a colleague of mine.

We laid out a map, an aerial map showing the Long Beach Airport right in the middle of our city surrounded by nothing more than homes, churches, schools. That is essentially what brought forth when in the 1970's, when we had a tremendous amount of aircraft noise, the community essentially got up in arms, came to the local elected officials and demanded we do something about it.

We realize that the complexity of the issue working towards trying to solve it, to make it where the airport can be operated in such a way where it really, it doesn't eliminate, but it definitely removes a lot of the negative impact on the community.

Are we there yet? As you probably have had enough testimony, many people think no.

The question is right before we came up also came to who was there first? Essentially it is the chicken and the egg approach. I like to say when somebody turns to Orville and Wilber at Kitty Hawk and say it is amazing what you have done.

Can you imagine what the Stealth Bomber is going to look like. Nobody knows what the future is going to bring in the industry.

What we had back then was much louder aircraft with stage 2. We have eliminated those with our restrictions which are very

tough. That is what began the litigation against the City of Long Beach.

It has been a case and it should be noted also that the airlines said originally when they sued our city was they wanted more and more flights.

This past year four airlines have left the Long Beach Airport, three completely and one partially because of the business climate, what have you, airport, the usage that Long Beach is not at the high they would want for passenger capacity. Our limitations, our restrictions we have in place is to protect the community. That is our strongest goal, is to make sure we understand that we can coexist here. It has been very difficult, but it has improved.

So not to leave you on a note that everyone comes in here, that everyone comes in here because the Federal Government and you have the answer, we try to problem. Instead of turning to you and say the buck stops here, we like to say we will take it and work on it and hopefully have the assistance of the Federal Government, your office.

We would like to think Long Beach, California is at the forefront. Many people here today and talked about stage 2 aircraft.

We are past that. We only allow stage 3 aircraft. We have put a lot of things in where many communities are probably five to ten years behind.

Mr. ANDERSON. Thank you, Mayor Kellogg, particularly for also bringing the airport manager, Mr. Kunze, along to give us his experience.

I thought that was very good. I also enjoyed asking you the question from our son Evan. He serves on the city council with Mayor Kellogg.

Mr. KELLOGG. That is why I also bring the airport manager, too.

Mr. OBERSTAR. He is a very kind Chairman.

I don't check whether the questions are okay before we plunge in.

Mr. ANDERSON. I might also ask questions I think are proper and they are crummy questions. People say Anderson doesn't know what he is doing then.

Mr. OBERSTAR. Anderson always knows what he is doing. He has contributed immensely to the growth of the district he represents. We are proud of him as Chairman and the way he has represented his constituency.

Thank you for coming here and sharing with us your thoughts. It was splendid testimony.

The subcommittee will resume the inquiry into noise issues on Thursday morning at 9:30 a.m., in Room 2200.

[Whereupon, at 7:00 p.m., the committee adjourned.]

PREPARED STATEMENTS OF WITNESSES

STATEMENT OF
MAYOR MARTIN J. BUTLER
BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 25, 1990

Martin J. Butler
Mayor, Park Ridge, Illinois
Chairman, Suburban O'Hare Commission
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37-824 0 - 91 - 6

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today to discuss the subject of aviation noise. I am the Mayor of the City of Park Ridge, Illinois. Park Ridge is over 110 years old and has a population of approximately 39,000. Our community is slowly being devastated by the unrestricted noise and air pollution created by the airlines using O'Hare.

I am also chairman of the Suburban O'Hare Commission, which is an organization of 13 communities whose residents are among the 400,000 victims of the City of Chicago, the airlines and the FAA within the 65 Ldn noise contour surrounding O'Hare.

There were 219,000 people living in these 14 communities *before* the first jet plane roared into the air and our average community is over 100 years old. I mention this because the airlines and the FAA are quick to charge that our communities were created because of the jet plane, not despite them.

I have been asked today to address several issues regarding the federal role in aircraft noise problems. Our communities around O'Hare, like noise impacted communities near other major airports, are greatly affected by federal action, or inaction, in the area of aircraft noise. Let me state at the outset that one major problem faced by our communities is the federal government's failure to acknowledge the legal role of state and local governments in this area. The preservation of state and local authority -- as guaranteed in the Constitution -- is essential. I believe that the federal government's failure in this area is a contributing factor in many of the problems with current federal aviation noise policy. These problems include:

1. **Failure to Acknowledge the Role of the States.** Current federal noise policy fails to clearly recognize the role of the states in the development and operation of airports and in the control and prevention of noise injury to airport neighbors. Under our constitutional system, the states are the creators and shapers of the municipal authorities which operate most major airports. The states have power separate and distinct from the state police power prohibited by *City of Burbank v. Lockheed Air Terminal,* 411 U.S. 624 (1973). It is time for the federal government to acknowledge the power of the states in shaping and controlling airport development and operation.

2. **Failure to Protect the Legal Rights of Noise Victims.** Current federal aviation noise policy fails to protect the rights of citizens injured by aircraft noise to recover compensation for their personal injuries and property damage under state and federal law. Though the right to recover such damages is clear, airport proprietors and airlines have used the

Congress's lack of a clear statement on this subject -- and on the related subject of statute of limitations -- to stymie critically needed compensation for victims of noise injury. In fact, some airport operators -- notably Chicago -- continue to argue that Congress has somehow preempted or otherwise precluded damage recovery. These spurious claims have taken two forms:

a. **The continuing false claim that state law damage remedies are currently preempted by Congress.** Though Congress, the Courts, and the FAA have repeatedly made clear that the airport operator has the current authority to limit noise in and around its airport through such controls as a limit on the number of operations, nighttime curfews, limits on noisy aircraft -- and a number of other controls -- operators such as Chicago argue that all state law damage remedies are preempted because somehow Congress has prohibited operators from taking such actions. Since, argues Chicago, Congress has preempted Chicago from taking such noise abatement action, Congress has indirectly preempted any state law damage remedies for either personal injury or property damage. Congress should clearly state that it does not intend to preempt state law personal injury and property damage remedies for victims of aircraft noise.

b. **The Bizarre Statute of Limitations Bar.** Under *Griggs v. Allegheny County*, 369 U.S. 84 (1962), homeowners who suffer substantial interference with the use and enjoyment of their property have a constitutional claim under the Fifth Amendment for the taking of their property without just compensation. The FAA estimates that there is approximately a 1% loss in property value for each 1 decibel increase in noise over the 65 Ldn level. For O'Hare area homes alone this represents a loss to homeowners of hundreds of millions of dollars.

   Until 1988, the statute of limitations to recover for such a taking would be borrowed from the state statute governing similar state constitutional taking claims -- in our state twenty years. However, as a result of a quirk in Supreme Court interpretation of the Civil Rights statute, 42 U.S.C. Section 1983, the statute of limitations for the federal constitutional claim for the taking of land is now governed by the much shorter state personal injury statute. See *Bieneman v. City of Chicago*, 864 F.2d 463, 467 (7th Cir. 1988), The result of that decision is that tens of thousands of homeowners around O'Hare -- as well as hundreds of thousands throughout the

country -- have suddenly lost -- *without compensation* -- their federal constitutionally guaranteed rights to compensation. Congress should address this gross injustice by establishing a federal statute of limitations for *Griggs* airport noise taking claims which is the same as the analogous state constitutional taking claim.

3. **The Failure to Distinguish Land Use Concerns Between Existing Urbanized Sites and Green-field New Sites.** Current federal aviation noise policy fails to distinguish between new airport construction or expansion in unpopulated rural areas and airport operational expansion in densely populated urban centers such as the area around O'Hare. Federal programs which encourage or require local airport sponsors to prevent incompatible land use are of little use -- and indeed often counterproductive -- when applied to established areas such as the long standing communities surrounding O'Hare.

   In our communities, which have been established for generations, it is both unsafe and unsound to allow industrial and warehouse operations to be "infilled" into existing residential neighborhoods. Yet this is exactly what the policy of the FAA encourages us to do. Land use controls may be wonderful when building a new airport in a green-field site with a major land buffer. But such controls are totally unacceptable in communities which have been established for over a century. We will not permit our established residential areas to be forced to become commercial or industrial to become compatible with the airport.

4. **The Failure to Focus the Federal Effort on New Environmentally Sound Airport Construction.** Little federal effort is being made to encourage the construction new environmentally sound airport facilities, built from the start with environmental protection of their neighbors as a central goal.

   In our area, a state study to select a site for a new regional airport -- which is being funded by the federal government -- has been moving slowly along for several years, against the opposition of the City of Chicago, the airlines and even some members of the FAA. It's time that the federal government get moving and encourage the development of a new major airport for the Chicago area.

   As a related issue, we need the federal government to once and for all declare that there will be no more runways at O'Hare Airport. The surrounding community has suffered enough. Already 400,000 people live, work, worship and attend school in an area which the federal

government has branded as suffering from excessive noise. In addition, the travelling public suffers from the lost margin of safety at an airport where controllers are expected to pack over 800,000 thousand flights a year into an already overcrowded airspace. Yet, the City of Chicago wishes to add two more runways and another 300,000 flights a year to that same airspace. A statement from the FAA that no more runways will be built at O'Hare is long overdue.

Another related issue is the use of the high-density rule at O'Hare and other major airports. The high-density rule limits the number of operations in peak hours for safety reasons. Recently some members of Congress, along with the airline industry, have sought to lift the high-density rule. For those of us near O'Hare, this is a frightening prospect. Our skies are already dangerously overcrowded and the number of near-misses grows annually. Lifting the high-density rule will threaten the safety of those who fly through O'Hare and those who live beneath its flight paths. We therefore urge you to oppose any attempt to undermine this rule.

5. **Failure to Break the Airlines Anti-Trust Financing Stranglehold.** Under the current system, the primary source of funding for new airports is through airport landing fees paid under contracts between the operator and the airlines. Airlines with major control of hub cities have used their lock on construction financing to block new airport construction so as to prevent new competition from entering their market.

   For example, in Chicago, United Air Lines and American Airlines have actively opposed a new airport in the region. They oppose a new airport because they have an overwhelming number of the gates at O'Hare and are able to tie up our market. As a result, people flying to our area do not receive the benefit of competitive fares. Plainly, these airlines oppose a new airport because it would allow other carriers to enter the Chicago market and compete. Such anti-competitive practices are bad for the travelling public and for the victims of airport noise.

6. **Failure to Move Beyond Stage III.** While the federal government debates the transition from Stage II aircraft to Stage III aircraft, little effort is being made to require even further progress in engine noise controls. There is no reason why the government should not be requiring more effort in the area of aircraft engine noise controls. Moreover, the failure to make advances in these areas will stand as a further impediment to the siting and construction of new airports.

Having voiced the criticisms of our communities, let me offer some suggestions on what the federal government can do to help solve the problems:

1. **New Engine Technology.** This subcommittee ought to investigate the current state of aircraft engine noise research and give serious consideration to establishing tough action-forcing standards for aircraft engine noise emissions. The federal government should also be very cognizant that while Stage III aircraft provide some relief, that relief can be lost by simply adding more operations. For example, converting to a Stage III fleet will not help the citizens of the O'Hare area if another 300,000 annual operations are then added at the airport.

2. **Keep the Decisionmaking Responsibility and the Concomitant Liability for Airport Operations with State and Local Governments.** The federal government has not and should not be in the business of siting, building and operating airports. Traditionally, the role of airport developer and operator has been with *local* government, assisted by federal financial assistance. Therefore, liability for personal injuries and property damage caused by caused by noise from aircraft using the airport has rested with the local municipality -- *not with the federal government. Griggs v. Allegheny County*, 369 U.S. 84 (1962). See also *Greater Westchester Homeowners Association v. City of Los Angeles*, 26 Cal.3d 86, 160 Cal. Rptr. 733, 603 P.2d 1329 (1979), *cert. denied*, 449 U.S. 820 (1980); *Baker v. Burbank-Glendale-Pasadena Airport Authority*, 39 Cal.3d 862, 218 Cal. Rptr. 293, 705 P.2d 886 (1985), *cert. denied*, 475 U.S. 1017 (1986); *Owen v. City of Atlanta*, 157 Ga. App. 354, 227 S.E.2d 338 (Ga. App. 1981), *aff'd., City of Atlanta v. Owen*, 248 Ga. 299, 282 S.E.2d 906 (1981), *cert. denied*, 456 U.S. 972 (1982); *Krueger v. Mitchell*, 112 Wis.2d 88, 332 N.W.2d 733 (1983); *Ursin v. New Orleans Aviation Board*, 506 Sc.2d 947 (La.App., 5th Cir. 1987).

   Under most -- if not all airport leases -- that liability has been imposed on the airlines under indemnity clauses. Such is the case with the leases at O'Hare Airport -- liability for aircraft noise injuries lies ultimately where it should -- with the airlines who profit from airport operation.

   Concomitant with this central role of local proprietors in our airport development system, there are several ancillary principles which must be recognized:

   a. **Recognize the Role of the States.** Congress should acknowledge the Constitutional authority of the States in airport development and operational control. Nothing in *Burbank* addressed the role of the states as the creator and authorizing entity for the acts of its political subdivisions. Congresss should not -- and cannot -- dictate the relationship between the state and its political subdivisions.

This should lead to a recognition of the authority of the states to expand, contract, limit, or even take away the authority of the municipal airport proprietor to build and operate an airport. The states can play a central role in developing new airports and in controlling the noise problems of old airports. Recognition of this point is important because some municipal airport proprietors -- notably Chicago -- have considered themselves immune from state control. The Congress should clear the air on this issue and declare no Congressional intent to oust states from their traditional Constitutional role in shaping the authority of their political subdivisions.

b. **Protect the Rights of Noise Victims to State and Federal Damage Remedies for Personal Injury and Property Damage.** Congress should recognize and protect the rights of airport neighbors suffering noise injury to recover compensation for personal injury and property damage under our federal and state law structures. Ideally, this means that Congress should: a) declare its intent that state law remedies for personal injury and property damage from noise not be preempted; and b) adopt a statute of limitations for a *Griggs* taking action under the Fifth Amendment which follows the parallel state statute of limitations for a state constitutional action for a taking.

c. **Rebuff Current Industry Attempts To Preempt State and Local Authority.** Congress should refuse to preempt state and local controls over noise at airports. Currently an industry group sponsored by the FAA is proposing that Congress should preempt all noise controls of Stage III aircraft by local airport proprietors. Our communities, among others, have voiced our strong opposition to this proposal to the FAA.

It is clear -- and even the industry seems to acknowledge -- that airport proprietors currently have the authority to impose noise controls and are not preempted under federal law. This critical proprietor authority should not be preempted for at least two reasons. First, it would transfer liability for federal and state personal injury and property loss damages from the proprietor (and the airlines under airport indemnity clauses) to the federal taxpayer. The federal government cannot afford to pay its own current federal obligations -- let alone a new multi-billion dollar bailout of the airport proprietors and the airlines. Second, by transferring liability for federal and state personal injury and property loss damage claims

from the airports and airlines to the federal government, Congress will have established yet another complex hoop for injured victims to jump through to obtain the compensation to which they are entitled under state and federal law. The danger here is that -- even more so than under the existing state of confusion -- the victim and his or her rights will slip through the cracks and receive no relief.

3. **Replace the Part 150 Program.** Congress should consider replacing the current "Part 150" program with a federal recognition of the existing power of the states to develop state law programs for control of: a) airport operations; and b) the land surrounding airports. For example, at O'Hare the Part 150 Study is an exercise in futility, with the City of Chicago offering only to move noise around, rather than to reduce noise.

   We need a federal policy which does not attempt to intrude on a policy making area traditionally left to the states -- land use. The central point which must be recognized is that any exercise of state power to regulate land use around airports must be accompanied by a parallel exercise of state power to control airport operations.

   Finally, it should be recognized that land use controls in already developed urban areas around many of today's major airports, such as O'Hare, will provide little relief. O'Hare was badly planned and is already overloaded. There simply is no land buffer. We cannot jam any more flights into O'Hare. Instead we must rapidly develop an environmentally sound new airport built from scratch with significant environmental buffers.

4. **Focus on Construction of New Environmentally Sound Airport Facilities.** It is clear that the current focus by the airlines and airport proprietors on jamming more flights into already overtaxed facilities will lead us to environmental and air transport gridlock if we attempt to rely on these aging congested facilities to meet future demand. The answer to our current and future overload lies in the construction of new environmentally sound (i.e. large land buffered) airport facilities to supplement and -- where appropriate -- replace existing congested noisy neighbor facilities. Certainly one of many roles for these new airports should be to off-load excess traffic from overloaded, congested, noisy existing facilities.

   We suggest that Congress' role here should be four-fold:

   a. Congress should develop incentive programs for the states to develop new environmentally sound green-field sites.

b. Congress should establish minimum environmental requirements for such sites so that new O'Hares are not created.

c. Congress should limit the growth in operations at existing congested and noisy sites. Such limits -- which would not preempt local limits at lesser levels -- would create an incentive for new airport construction.

d. Congress should develop financing mechanisms -- such as the passenger facility charge -- which will allow states to finance such new facilities at the most environmentally desirable location in the areas to be served.

Testimony on

FEDERAL AVIATION NOISE POLICY

before

THE SUBCOMMITTEE ON AVIATION
September 25, 1990

by

CRAIG J. CANTONI
PRESIDENT, NEW JERSEY COALITION AGAINST AIRCRAFT NOISE
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EXECUTIVE SUMMARY

The facts are clear and the truth is telling: An injustice has been inflicted on the good people of New Jersey. That injustice should be remedied by rolling back the Expanded East Coast Plan access routes over New Jersey and by conducting an environmental study in accord with the letter and spirit of environmental law.

Of equal importance is the generally accepted principle of polluters paying for their pollution and for protecting the environment in exchange for the expansion of their business. It is a travesty of justice for the victims of the pollution to have to bear the cost of expanding the polluters' business. And the cit-

izens of New Jersey are paying dearly for the expansion of the polluters' business, for the increased capacity and traffic in the nation's air system.

They are paying with the unnecessary destruction of their quality of life; with unhealthy stress, constant anger, and bitter frustration; and with millions and millions of dollars spent relocating, air conditioning, and soundproofing.

Sadly, an environmental disaster was inflicted on New Jersey without any public warning or public input, without any due process or any adherence to the principles, practices and values of representative government. In fact, the injustice was done by the government!

The best example of the interests of the polluter prevailing over the interests of the victim can be seen in statements made by the Air Transport Association and the Secretary of Transportation, Honorable Samuel Skinner.

When Los Angeles International Airport recently announced tougher noise abatement regulations, the Air Transport Association squealed like a stuck pig, saying that the industry was not being given "due process". That same Association had this to say about the public's concern over airplane noise: "That's the price you have to pay in a technological society." Similarly, Secretary

Skinner has said that people are just going to have to learn to get used to more noise.

Nothing frames the opposing issues more clearly than the above statements; nothing explains better why the issues have become so polarized, why the citizens (victims) have become so disillusioned with their government.

INTRODUCTION

The New Jersey Coalition Against Aircraft Noise appreciates the opportunity to state its case before the Honorable Chairman James Oberstar and the other distinguished members of the Subcommittee.

To us, government for the people and by the people does not mean government by special interest groups or government by unaccountable, dictatorial federal agencies that behave as if the people are nothing more than a nuisance, as something that gets in the way of singular bureaucratic goals.

It is encouraging that the Coalition has the opportunity to speak before the honorable members of the Subcommittee, all of whom subscribe to the basic tenets of our great democracy. Political office is a high calling that can achieve social justice by protecting the powerless against the powerful. The Coalition is confident that the Subcommittee, upon hearing the truth, will conclude that an injustice has been inflicted on the citizens of

New Jersey by the Federal Aviation Administration, which appears to have become an institution that is beholden to the narrow self-interest of the airline industry, and which appears to have formed an incestuous relationship with the industry that it is supposed to be regulating in the interest of ALL citizens.

The Coalition represents thousands of citizens in 220 communities and 18 counties, covering over 4,000 square miles of the Garden State. It is a grass-roots, community-action organization that wants nothing more than the restoration of the quality of life that the citizens of New Jersey once had. The Coalition is not against airports, airplanes, or air travel. To the contrary, many members, including this writer, are business executives and frequent fliers who depend on air travel for their livelihood. However, unlike the FAA and airline industry, the members of the Coalition have no economic stake in the airplane noise issue, nor are they concerned with the furtherance of governmental careers. Coalition members are simply aggrieved citizens who want and deserve justice, who want to speak the truth.

Let's proceed with the truth.

BACKGROUND

Three years and seven months ago, with no public warning, environmental study, or public input, the Federal Aviation Administration implemented the Expanded East Coast Plan (EECP), which

was the biggest change in air routes in history. Seven years in the making, the EECP resulted in the relocation of all existing routes and the addition of fifty percent more routes over New Jersey, which is the most densely populated state in the nation.

Citizen outrage was immediate, unrelenting and loud -- just like the airplane noise. Grass roots groups sprung up all over the state, some as far as fifty miles from the airport; thousands of complaints were filed with the Port Authority and the FAA; town after town passed resolution after resolution; the General Accounting Office, New Jersey Department of Environmental Protection, Port Authority, and independent consulting firms issued reports verifying the extent of the environmental disaster and calling for environmental studies; eleven members of Congress joined forces with the citizens; the Governor expressed his outrage; legislation was introduced in the State Legislature; the state's two honorable U.S. Senators proposed a five-point plan; four U.S. Representatives proposed legislation in the House; New Jersey filed an Amicus Curia brief in support of California's suit; the New Jersey Association of School Board Presidents passed a resolution against the EECP in order to protect the learning process; and the local and national media continue to give the issue extensive coverage.

The result? Nothing!

Nothing, that is, except stonewalling, obfuscation, lame excuses, and arcane technical mumbo jumbo from the FAA.

Nothing, that is, except an arrogant, condescending attitude by the FAA and its regional director, Daniel Peterson, toward the public, an attitude that simply added fuel to the flames of outrage and increased the membership of the Coalition.

Nothing, that is, except an intense lobbying effort and increased political contributions by the the Air Transport Association.

Nothing, that is, except some tinkering with the routes that only moved the planes from one community to the next, in a cynical and obvious attempt to divide and conquer and pit one community against another.

This is certainly not the vision that Thomas Jefferson had of the way a representative government is supposed to work.

HUMAN SUFFERING

The FAA has tried to dismiss jet noise as a harmless annoyance. Nothing could be further from the truth.

Thousands of citizens in New Jersey who had lived all their lives in tranquil neighborhoods, awakened one day to the constant roar of low flying jets, one after another, never ending, morning, afternoon and night. Citizen after citizen tried to cope. Some gave up all outdoor activities, some air conditioned their homes, some retreated to their basements to live like moles, some moved, some soundproofed their homes -- all experienced unhealthy stress, sleeplessness, burning anger, and intense frustration; most spent considerable money in trying to deal with the problem.

The stories are endless. One of the most poignant and typical is the story of the seventy-year-old woman who had lived in the same house and quiet neighborhood all of her life. On a fixed income, this woman enjoyed the simple pleasures of life, things like reading, gardening, and talking to neighbors. All of a sudden, without warning, her life was destroyed -- yes, destroyed. She has now given up gardening, spent her limited income on air conditioning her home, and retreated inside to live out her remaining years like a hermit. She now lives with a burning rage that affects her health and well being.

The Coalition has hundreds of letters telling similar stories, letters that cannot be read without feeling anger and disgust over the callous actions of faceless bureaucrats, dressed in

their suits, armed with their technical jargon, speaking their dispassionate bureaucratic language.

A philosopher once spoke of the banality of evil. We humbly implore the Subcommittee to see beyond the banal bureaucratic facade, to see, instead, the suffering face of the seventy-year-old woman and the thousands of other outraged faces of the public.

FALLACY OF EECP

The EECP was implemented to reduce delays. Has it been successful?

No, delays have never been worse at the three New York airports, although traffic has not increased and weather has not been a factor. Seven years in the making and the plan does not work! Is it any wonder that some career bureaucrats at the top of the FAA are not being truthful? After all, they have their backsides to protect.

As Paul Strybing of the FAA said in the Wall Street Journal last year, the biggest cause of delays is the unrealistic and dishonest scheduling practices of the airlines, particularly the cramming of too many planes into the most "popular" time slots, thus overburdening the air traffic control system and the air traffic controllers. In our visits to the towers, controllers have told us that for most of the day they have little to do.

The other major causes of delays are deregulation and the hub-and-spoke system, which was designed for packages instead of people.

The sad fact is this: Other options were available to the FAA and airlines for dealing with the delay and capacity problem. Those options should have been exhausted before an attempt was made to solve the problem on the backs of the citizens of New Jersey. The polluter should have been asked to stop his pollution, rather than force the victims to accept more pollution.

Deregulation has given the airlines opportunities for growth, increased fares, and oligopolistic market conditions. With those opportunities comes social responsibility and respect for the environment.

One other comment on the EECP: There is reason to believe that when the new routes were being designed over New Jersey, the FAA treated the Garden State as nothing more than blank airspace, as a void on a map, as a shortcut between the New York region and most of the rest of the country. Consideration was not given to using the ocean, to maximizing overflights in industrial areas, and to minimizing the adverse effects on the population. Certainly no consideration was given to involving the public and its elected leadership in some sort of democratic processs before in-

stalling the routes. It is clear why complaints from New Jersey to the Port Authority and FAA outnumber complaints from New York by fifty-to-one.

NEPA VIOLATIONS

The FAA says that it did not conduct an environmental assessment under the provisions of the National Environmental Policy Act because the route changes were above 3,000 feet and because they had no way of knowing that the changes would result in public controversy. The facts are different. There is documented proof that the 3,000 foot rule was violated and that the FAA, through years of experience, knew that public controversy would result from the changes. In fact, the FAA implemented Phase II of the EECP after the public outcry that occurred after Phase I.

Frankly, the FAA is engaging in legal hair-splitting. Even if it were true that the letter of the law was not violated, the spirit of the law certainly was. There is no excuse in a democratic society for unilateral, dictatorial actions from governmental agencies.

To quote a Roman adage:

That which touches us all

Should be decided by us all

THE 65 Ldn ISSUE

The FAA uses something called the 65 Ldn measure of noise as a national standard for land use planning. This may be a satisfactory standard for measuring noise close to an airport, but it is totally inappropriate for measuring en route noise more than a couple of miles from the runway. Experts, including the Coalition's own noise consultant, will be willing to testify to this effect and to provide technical and mathematical alternatives to the 65 Ldn.

Rather than getting into a complex technical discussion, it might be helpful to quote from the General Accounting Office report on the EECP:

> Despite its use as the national noise standard, Ldn has been the subject of criticism. One common criticism is that the averaging process that is an essential part of Ldn's methodology dilutes high levels of intermittent noise that may be experienced at various times during a 24-hour period. For example, 30 overflights of aircraft that each reach 83 dBA (approximately equal to the noise level within a typical city bus) during the hours of 7 a.m. to 10 p.m. will result in a Ldn of about

60, well below the level considered incompatible with residential land use.

To further illustrate the inadequacy of the 65 Ldn measure, people living 18 miles from the airport (as this writer does) can be awakened every half-hour by the passing of cargo jets in the wee hours of the morning, and the FAA will say that there is no problem. To draw an analogy, the situation is similar to a neighbor starting his lawnmower every half-hour, beginning at 3:30 a.m. and continuing until dawn. It does not take a scientist to understand that such behavior is irresponsible, anti-social, and self-centered, whether measured by Ldn's or something else. The only difference between the lawnmower and a jet is that the middle-of-the-night running of the mower is illegal, the roar of the jet is not.

Again, as noise experts will testify, there are certainly better measures of en route noise than the 65 Ldn; but the FAA has to let loose of the past and be willing to seriously study other approaches. At the minimum, the FAA's measurements have to take single events into consideration and to calculate the changes between the L01 and L90 levels of sound, particularly in those neighborhoods that have low residual (ambient)levels of noise.

SACRED COW INDUSTRY

Perhaps the most discouraging and depressing aspect of the entire noise issue is the industry's reticence to convert to quieter Stage 3 aircraft. As an executive with a manufacturing/chemicals company, this writer is astounded by the double standard that exists for the airline industry compared to other industries. As a citizen of the United States and a believer in representative government, this writer is shocked by the amount of money and influence the industry carries on Capitol Hill. It is easy to become cynical and to believe that the two facts are somehow connected.

Most American industry has learned that concern for the environment is good business. Most industry has had to spend considerable sums of money protecting the environment, installing water treatment facilities, smokestack scrubbers, and other expensive equipment. In New Jersey, for example, factories have to adhere to a nighttime noise standard of 50 dBA, which is a level of sound exceeded constantly by nighttime flights even 20 miles from the airport.

The industry will cite the cost of converting Stage 2 equipment to Stage 3 and limited manufacturing capability as an excuse for not supporting an accelerated phase-out of Stage 2's. At the same time it continues to import Stage 2's being phased out in Europe. One is reminded of the purchaser of a gas-guzzling car who complains that the price of gasoline has increased.

The fact is that the capability exists to convert the entire fleet within five years, and that the cost of the conversion, as a percentage of the industry's entire capitalization, is relatively small.

Besides, the industry continues to miss the point. As stated earlier, in exchange for increased capacity, increased fares, and the near monopolistic conditions established by deregulation, the industry should actively and voluntarily pay the price necessary to protect the environment -- just as other industries must do. The industry is only now willing to come to the bargaining table because the national uproar over the environmental consequenses of its actions is building to a crescendo. The industry realizes, with good reason, that the public will no longer tolerate a callous disregard for those on the ground, and that if it does not do something, it will face even more restrictive local operating rules at the more socially responsible airports.

The industry insults our intelligence to advertise a ten-year phase-out of Stage 2's as something that it would do out of the goodness of its heart. Unbelievably, many of the more poorly managed, inefficient, cash-starved airlines actually want an environmental tradeoff whereby they will convert to Stage 3's in exchange for the right to sue airport operators and for a guarantee that Stage 3's will be protected into perpetuity. Once again, the victims are being asked to pay for the mistakes and lack of foresight of the polluters. Maybe this writer should ask

the EPA for a ten-year moratorium on emmission standards for his factories because they are too expensive.

STATEMENT OF
VILLAGE PRESIDENT JOHN C. GEILS
BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 25, 1990

John C. Geils
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Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today to discuss the subject of aviation noise. I am the President of the Village of Bensenville, Illinois. Bensenville is over 100 years old and has a population of approximately 17,000. Many of the people who live in Bensenville have family ties to the community which stretch back many generations. In fact, my great-great grandfather was a trustee of our village in 1891. Often the City of Chicago and the airlines which use O'Hare contend that our residents moved to Bensenville because of the airport and that accordingly we should not complain about the damage that O'Hare is doing in our community. However, my family, like many other families in Bensenville, came to our town long before the Wright brothers made their first flight. The airport came to us, not the other way around.

I am also the vice-chairman of the Suburban O'Hare Commission, which is an organization of 13 communities whose residents are among the 400,000 victims of the City of Chicago, the airlines and the FAA. Every day our citizens suffer the consequences of living near the world's busiest airport. Classroom instruction in our schools in constantly interrupted, people cannot sleep through the night, and often it is difficult to engage in normal conversation in one's own living room.

I have been asked today to address several issues regarding the federal role in aircraft noise problems. Our communities around O'Hare, like noise impacted communities near other major airports, are greatly affected by the federal government's policies regarding aircraft noise.

One of the biggest problems that we face is the federal government's failure to acknowledge the legal role of state and local governments in the area of noise regulation. We constantly battle the City of Chicago and the FAA in an attempt to have them recognize that under our Constitution, state and local authority has been preserved. The federal government's failure to clarify this issue is a contributing factor in many of the problems with current federal aviation noise policy.

As vice-chairman of the Suburban O'Hare Commission, I serve as a representative of the National League of Cities on the Airport Noise Working Group, which is charged with making recommendations to the FAA Capacity Task Force. Again, the failure of the federal government to make a clear statement regarding the preservation of state and local authority has been a major source of problems and controversy for the Working Group.

There are several problems with the federal government's current aviation noise policy. These include:

1. **The Failure to Distinguish Land Use Concerns Between Existing Urbanized Sites and Green-field New Sites.** Current federal aviation noise policy fails to

distinguish between new airport construction or expansion in unpopulated rural areas and airport operational expansion in densely populated urban centers such as the area around O'Hare. Federal programs which encourage or require local airport sponsors to prevent incompatible land use are of little use -- and indeed often counterproductive -- when applied to established areas such as the long standing communities surrounding O'Hare.

In our communities, which have been established for generations, it is both unsafe and unsound to allow industrial and warehouse operations to be "infilled" into existing residential neighborhoods. Yet this is exactly what the policy of the FAA encourages us to do. Land use controls may be wonderful when building a new airport in a green-field site with a major land buffer. But such controls are totally unacceptable in communities which have been established for over a century. We will not permit our established residential areas to be forced to become commercial or industrial to become compatible with the airport.

2. **Failure to Acknowledge the Role of the States.** Current federal noise policy fails to clearly recognize the role of the states in the development and operation of airports and in the control and prevention of noise injury to airport neighbors. Under our constitutional system, the states are the creators and shapers of the municipal authorities which operate most major airports. The states have power separate and distinct from the state police power prohibited by *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973). It is time for the federal government to acknowledge the power of the states in shaping and controlling airport development and operation.

3. **The Failure to Focus the Federal Effort on New Environmentally Sound Airport Construction.** Little federal effort is being made to encourage the construction new environmentally sound airport facilities, built from the start with environmental protection of their neighbors as a central goal.

In our area, a state study to select a site for a new regional airport -- which is being funded by the federal government -- has been moving slowly along for several years, against the opposition of the City of Chicago, the airlines and even some members of the FAA. It's time that the federal government get moving and encourage the development of a new major airport for the Chicago area.

As a related issue, we need the federal government to once and for all declare that there will be no more runways at O'Hare Airport. The surrounding community has suffered enough. Already 400,000 people live, work, worship and attend school in an area which the federal government has branded as suffering from excessive noise. In addition, the travelling public suffers from the lost margin of safety at an airport where controllers are expected to pack over 800,000 thousand flights a year into an already overcrowded airspace. Yet, the City of Chicago

wishes to add two more runways and another 300,000 flights a year to that same airspace. A statement from the FAA that no more runways will be built at O'Hare is long overdue.

Another related issue is the use of the high-density rule at O'Hare and other major airports. The high-density rule limits the number of operations in peak hours for safety reasons. Recently some members of Congress, along with the airline industry, have sought to lift the high-density rule. For those of us near O'Hare, this is a frightening prospect. Our skies are already dangerously overcrowded and the number of near-misses grows annually. Lifting the high-density rule will threaten the safety of those who fly through O'Hare and those who live beneath its flight paths. We therefore urge you to oppose any attempt to undermine this rule.

4. **Failure to Protect the Legal Rights of Noise Victims.** Current federal aviation noise policy fails to protect the rights of citizens injured by aircraft noise to recover compensation for their personal injuries and property damage under state and federal law. Though the right to recover such damages is clear, airport proprietors and airlines have used the Congress's lack of a clear statement on this subject -- and on the related subject of statute of limitations -- to stymie critically needed compensation for victims of noise injury. In fact, some airport operators -- notably Chicago -- continue to argue that Congress has somehow preempted or otherwise precluded damage recovery. These spurious claims have taken two forms:

   a. **The continuing false claim that state law damage remedies are currently preempted by Congress.** Though Congress, the Courts, and the FAA have repeatedly made clear that the airport operator has the current authority to limit noise in and around its airport through such controls as a limit on the number of operations, nighttime curfews, limits on noisy aircraft -- and a number of other controls -- operators such as Chicago argue that all state law damage remedies are preempted because somehow Congress has prohibited operators from taking such actions. Since, argues Chicago, Congress has preempted Chicago from taking such noise abatement action, Congress has indirectly preempted any state law damage remedies for either personal injury or property damage. Congress should clearly state that it does not intend to preempt state law personal injury and property damage remedies for victims of aircraft noise.

   b. **The Bizarre Statute of Limitations Bar.** Under *Griggs v. Allegheny County*, 369 U.S. 84 (1962), homeowners who suffer substantial interference with the use and enjoyment of their property have a constitutional claim under the Fifth Amendment for the taking of their property without just compensation. The FAA estimates that there is approximately a 1% loss in property value for each 1 decibel increase in

noise over the 65 Ldn level. For O'Hare area homes alone this represents a loss to homeowners of hundreds of millions of dollars.

Until 1988, the statute of limitations to recover for such a taking would be borrowed from the state statute governing similar state constitutional taking claims -- in our state twenty years. However, as a result of a quirk in Supreme Court interpretation of the Civil Rights statute, 42 U.S.C. Section 1983, the statute of limitations for the federal constitutional claim for the taking of land is now governed by the much shorter state personal injury statute. See *Bieneman v. City of Chicago*, 864 F.2d 463, 467 (7th Cir. 1988), The result of that decision is that tens of thousands of homeowners around O'Hare -- as well as hundreds of thousands throughout the country -- have suddenly lost -- *without compensation* -- their federal constitutionally guaranteed rights to compensation. Congress should address this gross injustice by establishing a federal statute of limitations for *Griggs* airport noise taking claims which is the same as the analogous state constitutional taking claim.

5. **Failure to Move Beyond Stage III.** While the federal government debates the transition from Stage II aircraft to Stage III aircraft, little effort is being made to require even further progress in engine noise controls. There is no reason why the government should not be requiring more effort in the area of aircraft engine noise controls. Moreover, the failure to make advances in these areas will stand as a further impediment to the siting and construction of new airports.

6. **Failure to Break the Airlines Anti-Trust Financing Stranglehold.** Under the current system, the primary source of funding for new airports is through airport landing fees paid under contracts between the operator and the airlines. Airlines with major control of hub cities have used their lock on construction financing to block new airport construction so as to prevent new competition from entering their market.

For example, in Chicago, United Air Lines and American Airlines have actively opposed a new airport in the region. They oppose a new airport because they have an overwhelming number of the gates at O'Hare and are able to tie up our market. As a result, people flying to our area do not receive the benefit of competitive fares. Plainly, these airlines oppose a new airport because it would allow other carriers to enter the Chicago market and compete. Such anti-competitive practices are bad for the travelling public and for the victims of airport noise.

Having voiced the criticisms of our communities, let me offer some suggestions on what the federal government can do to help solve the problems:

1. **Focus on Construction of New Environmentally Sound Airport Facilities.** It is clear that the current focus by the airlines and airport proprietors on jamming more flights into already overtaxed facilities will lead us to environmental and air transport gridlock if we attempt to rely on these aging congested facilities to meet future demand. The answer to our current and future overload lies in the construction of new environmentally sound (i.e. large land buffered) airport facilities to supplement and -- where appropriate -- replace existing congested noisy neighbor facilities. Certainly one of many roles for these new airports should be to off-load excess traffic from overloaded, congested, noisy existing facilities.

   We suggest that Congress' role here should be four-fold:

   a. Congress should develop incentive programs for the states to develop new environmentally sound green-field sites.

   b. Congress should establish minimum environmental requirements for such sites so that new O'Hares are not created.

   c. Congress should limit the growth in operations at existing congested and noisy sites. Such limits -- which would not preempt local limits at lesser levels -- would create an incentive for new airport construction.

   d. Congress should develop financing mechanisms -- such as the passenger facility charge -- which will allow states to finance such new facilities at the most environmentally desirable location in the areas to be served.

2. **Keep the Decisionmaking Responsibility and the Concomitant Liability for Airport Operations with State and Local Governments.** The federal government has not and should not be in the business of siting, building and operating airports. Traditionally, the role of airport developer and operator has been with *local* government, assisted by federal financial assistance. Therefore, liability for personal injuries and property damage caused by caused by noise from aircraft using the airport has rested with the local municipality -- *not with the federal government. Griggs v. Allegheny County*, 369 U.S. 84 (1962). See also *Greater Westchester Homeowners Association v. City of Los Angeles*, 26 Cal.3d 86, 160 Cal. Rptr. 733, 603 P.2d 1329 (1979), *cert. denied*, 449 U.S. 820 (1980); *Baker v. Burbank-Glendale-Pasadena Airport Authority*, 39 Cal.3d 862, 218 Cal. Rptr. 293, 705 P.2d 886 (1985), *cert. denied*, 475 U.S. 1017 (1986); *Owen v. City of Atlanta*, 157 Ga. App. 354, 227 S.E.2d 338 (Ga. App. 1981), *aff'd., City of Atlanta v. Owen*, 248 Ga. 299, 282 S.E.2d 906 (1981), *cert. denied*, 456 U.S. 972 (1982); *Krueger v. Mitchell*, 112 Wis.2d 88, 332 N.W.2d 733 (1983); *Ursin v. New Orleans Aviation Board*, 506 So.2d 947 (La.App., 5th Cir. 1987).

Under most -- if not all airport leases -- that liability has been imposed on the airlines under indemnity clauses. Such is the case with the leases at O'Hare Airport -- liability for aircraft noise injuries lies ultimately where it should -- with the airlines who profit from airport operation.

Concomitant with this central role of local proprietors in our airport development system, there are several ancillary principles which must be recognized:

a. **Recognize the Role of the States.** Congress should acknowledge the Constitutional authority of the States in airport development and operational control. Nothing in *Burbank* addressed the role of the states as the creator and authorizing entity for the acts of its political subdivisions. Congresss should not -- and cannot -- dictate the relationship between the state and its political subdivisions.

   This should lead to a recognition of the authority of the states to expand, contract, limit, or even take away the authority of the municipal airport proprietor to build and operate an airport. The states can play a central role in developing new airports and in controlling the noise problems of old airports. Recognition of this point is important because some municipal airport proprietors -- notably Chicago -- have considered themselves immune from state control. The Congress should clear the air on this issue and declare no Congressional intent to oust states from their traditional Constitutional role in shaping the authority of their political subdivisions.

b. **Protect the Rights of Noise Victims to State and Federal Damage Remedies for Personal Injury and Property Damage.** Congress should recognize and protect the rights of airport neighbors suffering noise injury to recover compensation for personal injury and property damage under our federal and state law structures. Ideally, this means that Congress should: a) declare its intent that state law remedies for personal injury and property damage from noise not be preempted; and b) adopt a statute of limitations for a *Griggs* taking action under the Fifth Amendment which follows the parallel state statute of limitations for a state constitutional action for a taking.

c. **Rebuff Current Industry Attempts To Preempt State and Local Authority.** Congress should refuse to preempt state and local controls over noise at airports. Currently an industry group sponsored by the FAA is proposing that Congress should preempt all noise controls of Stage III aircraft by local airport proprietors. Our communities, among others, have voiced our strong opposition to this proposal to the FAA.

It is clear -- and even the industry seems to acknowledge -- that airport proprietors currently have the authority to impose noise controls and are not preempted under federal law. This critical proprietor authority should not be preempted for at least two reasons. First, it would transfer liability for federal and state personal injury and property loss damages from the proprietor (and the airlines under airport indemnity clauses) to the federal taxpayer. The federal government cannot afford to pay its own current federal obligations -- let alone a new multi-billion dollar bailout of the airport proprietors and the airlines. Second, by transferring liability for federal and state personal injury and property loss damage claims from the airports and airlines to the federal government, Congress will have established yet another complex hoop for injured victims to jump through to obtain the compensation to which they are entitled under state and federal law. The danger here is that -- even more so than under the existing state of confusion -- the victim and his or her rights will slip through the cracks and receive no relief.

3. **Replace the Part 150 Program.** Congress should consider replacing the current "Part 150" program with a federal recognition of the existing power of the states to develop state law programs for control of: a) airport operations; and b) the land surrounding airports. For example, at O'Hare the Part 150 Study is an exercise in futility, with the City of Chicago offering only to move noise around, rather than to reduce noise.

We need a federal policy which does not attempt to intrude on a policy making area traditionally left to the states -- land use. The central point which must be recognized is that any exercise of state power to regulate land use around airports must be accompanied by a parallel exercise of state power to control airport operations.

Finally, it should be recognized that land use controls in already developed urban areas around many of today's major airports, such as O'Hare, will provide little relief. O'Hare was badly planned and is already overloaded. There simply is no land buffer. We cannot jam any more flights into O'Hare. Instead we must rapidly develop an environmentally sound new airport built from scratch with significant environmental buffers.

4. **New Engine Technology.** This subcommittee ought to investigate the current state of aircraft engine noise research and give serious consideration to establishing tough action-forcing standards for aircraft engine noise emissions. The federal government should also be very cognizant that while Stage III aircraft provide some relief, that relief can be lost by simply adding more operations. For example, converting to a Stage III fleet will not help the citizens of the O'Hare area if another 300,000 annual operations are then added at the airport.

N.O.I.S.E.

National Organization to Insure a Sound-controlled Environment

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TESTIMONY OF

Thomas N. Duffy

Executive Director

National Organization to Insure a

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N . O . I . S . E .

before the

Subcommitte on

Aviation

of the Committee on

Public Works and Transportation

Congressman James L. Oberstar, Chairman

September 25, 1990

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Good morning, Mr. Chairman and Members of the Committee. I am Thomas Duffy, Executive Director of N.O.I.S.E., the National Organization to Insure a Sound-Controlled Environment. N.O.I.S.E. is an association of about forty city governments whose citizens are impacted by aviation noise. For the most part, they are not airport sponsor cities.

My testimony today is also on behalf of the National League of Cities with widespread city membership in all fifty states.

We thank you, Mr. Chairman, for holding these hearings. It has been a number of years since major legislation on aviation noise has been put in place. Aviation technology and the structure of the industry itself have changed a good deal since, for example, the Aviation Safety and Noise Abatement Act of 1979 was passed. It is time to consider new legislation which will continue the undoubted progress which we have made in aviation noise since the advent of the first 707's and DC-8's.

In order to aid your consideration of such legislation, we would like to comment on four points:

- A basis for aviation noise policy.
- Legislation toward a quieter fleet.
- Local rules and local roles.
- The community and aviation noise.

A BASIS FOR AVIATION NOISE POLICY

Aviation noise has been dealt with as an aviation issue. Aviation's vocabulary, attitudes and assumptions have been used to define the problem and to develop solutions. Some suggested solutions sound plausible only if aviation noise is solely a transportation issue. Viewing it that way can skew the problem and its solutions. It's like describing Love Canal solely as a chemical problem.

Noise, including aviation noise, is primarily and fundamentally an environmental issue. It degrades the environment and has documented serious physical, psychological, social and community effects.

There is established national policy on the environment and environmental policy. That policy should be applied when we deal with airport noise and its effects.

The fundamental statement of this policy is that the polluter is responsible for pollution. This sounds self-evident. It has important consequences, however. It also means that the polluter is responsible for eliminating or reducing the pollution. In the shorthand statement, "the polluter pays."

Another basic premise is that the environmental goal is to reduce pollution. This straightforward statement also gives us an important standard for evaluating aircraft noise proposals. If an action will reduce noise, it moves toward our goal and should be considered. If it maintains the status quo, it does not move us toward our goal and is suspect. If a proposed action will increase noise, it can be rejected out of hand.

A working pattern has developed in our various environmental programs. It is an intergovernmental pattern and it works this way. The federal government sets minimum environmental standards which states and localities must meet or exceed. It prescribes effective national measures which must be taken to help meet the standards. State and local governments are then responsible for taking whatever further steps are appropriate in each place to achieve compliance. In other environmental programs, it is characteristic that the standards are not easy to meet, that the federal standards are minimums (not maximums) and that state and local governments are expected to adopt programs which fit their local situation to the national requirement.

When federal, state or local government takes action to reduce pollution or eliminate environmentally flawed operating practices, the measures involved are environmental rules, requirements or standards. The fact that an operator may be forced to reduce or eliminate certain environmetally damaging actions does not make the environmental action a "use restriction."

In evaluating aviation noise policy, then, we can apply four tests.

- Do our actions reduce pollution?
- Is the polluter responsible to achieve the reduction?
- Are our goals and standards difficult to meet?
- Is there an effective intergovernmental process?

LEGISLATION TOWARDS A QUIET FLEET

The single most effective step that can be taken to reduce aviation noise is to get quieter airplanes. Until about 1980 there was a steady, if slow, series of laws which ended design certification, then aircraft acquisition, and finally the operation of Stage 1 aircraft in the U.S.

U.S. policy is that we should, whenever it is technologically and economically feasible to do so, move to the operation of the quietest possible aircraft. This is the policy we followed with Stage 1. It is now time to move from Stage 2 to Stage 3. The type certification step has already been taken. Non-addition and operational rules remain to be considered. We recommend:

- A Stage 2 non-addition rule effective on October 31, 1990 the same date as the European Community's Stage 2 non-addition rule.
- An end to Stage 2 operation on December 31, 1999.

A non-addition rule would not allow non-Stage 2 aircraft to be registered in the U.S. When in its absence the ECAC non-addition rule takes effect, owners of European registered Stage 2 aircraft that become surplus will look to the U.S. as their primary market.

U.S. purchase and registration of those older, noisier Stage 2 aircraft will result in importing excess noise into the U.S. and increasing our fleet noise average. It will maintain and increase our aviation noise. This is a noise subsidy that impacted communities do not want to give.

Reasons given for delaying a non-addition rule are that smaller carriers, freight carriers and new starts need a source of used Stage 2 aircraft. Within the last six months or so, used Stage 2 aircraft of virtually all types have begun to appear on the used aircraft market. Analysts predict that this trend will continue. We have apparently gotten to the point where the rate of delivery of new aircraft exceeds the carriers' requirements to add new capacity. New deliveries are beginning to make older aircraft in the fleet surplus.

Given an existing market for used aircraft in the U.S. there is no technological or economic reason not to move promptly on a non-addition rule. There is every environmental reason to do so.

We strongly recommend that the Congress set an end to Stage 2 operations in the U.S. by December 31, 1999. This is a reasonable step. It is, by FAA testimony, the most effective step we can take to reduce the impact of aviation noise on communities and, secondarily, the negative impact of aviation noise on the industry itself. It is a goal that will take some effort to attain, but it is a reachable goal and a practical effort.

The "Year 2000" is a phrase that has become common in aviation noise circles. It has been recommended by N.O.I.S.E. before and by other organizations. It was the date that the original Industry Task Force settled on.

It's a good, doable date. The technology to accomplish it is already or soon will be in place. A five year backlog at the manufacturers tells us that new planes are being sought to support operations increases and also for fleet replacement.

Stage 3 noise conversion technology is now or will soon be available for all types of Stage 2 heavy aircraft.

With projected certification and production rates for hushkits, it is apparently possible to refit our entire Stage 2 fleet by the end of 1996. Operators might argue that 1996 is too soon, that they would need more time for financing and that level production rates need to be established.

Giving weight to these arguments, we would stand by our earlier recommendation of an end to Stage 2 operations by December 31, 1999. We also strongly resist any move to delay the end of Stage 2 operations past that date. Ten years from now is enough time to plan, especially since much of the planning and preparation has already been done by the operators, by the aircraft manufacturers and by the noise conversion - kit developers. Delay of a year or so beyond 2000 will benefit no one significantly.

If we get a timely non-addition rule and an end of Stage 2 operations at the end of the century, what then? The idea seems to float around that once we have an all Stage 3 fleet, the problem is solved; We will open a door and step into eternal springtime.

Unfortunately, it won't be that simple. FAA estimates that more than a million people will still live within $65L_{DN}$. We'll have to keep improving.

"But how?" is a reasonable question. There is no Stage 4 on the horizon (although NASA and FAA are going to take an intensive look at that). What we can do is concentrate on the "best of the best" of what we have. There is variation in the noise performance of current Stage 3 aircraft, enough that eliminating the noisier among them could reduce average fleet noise noticeably. We present a policy of moving toward Stage 3.5, the best of the best. This would be accomplished in three steps.

- Definition. An R&D effort to define and promulgate standards for a Stage 3.5. They would be tighter than our current Stage 3 but would include the quietest of current aircraft types.
- Non-addition. 1995 might be a convenient time to make this effective since all new aircraft produced then will presumably meet Stage 3.5 standards.
- A rule ending non-Stage 3.5 operations. This rule should probably be effective about the year 2015, allowing economic use of existing non Stage 3.5 aircraft.

The proposal is evolutionary, not radical. It has ample time for implementation. The technology for it exists right now.

LOCAL RULES AND LOCAL RULES

Air Carrier airport proprietors present an interesting situation. They are state or local government agencies. They create and operate their airports on local initiative for local purposes. Historically this situation derived from a federal policy not to create or assist in the creation of airports. The policy was that the federal government would set up airways and navigation systems, but if a locality wanted an airport, it had to put it together by itself. The conscious federal analogy was to federal waterways. The government builds locks and dams and dredges channels to make rivers navigable, but it will not install wharves or piers or any other type of port facility. When the government first began an airport assistance program, it recognized both the duties and the powers of local airport sponsors. While airport assistance, like federal assistance has strings, the strings are carefully limited.

In particular, they allow airports to set up certain aircraft noise requirements at an airport, such as the type of aircraft that can use the airport, how many aircraft and what time of day they can operate. The general limitations on this local authority are that the requirements be directed at reducing noise, that they be reasonable and that they be non-discriminatory. FAA can also implement the constitutional requirement that there be no undue burden on interstate commerce.

Airport operators retain this power because they have the legal liability for noise produced at their airports. This same power constitutes the airport neighbor community's strongest protection against the noise which would be produced by unrestrained air carrier operation.

It is now proposed that the power of the airport proprietor to regulate noise be taken away and assumed by FAA. We oppose this for a variety of reasons:

- This would be a federal usurpation of local governmental authority.
- Communities lose their best protection against noise
- FAA cannot regulate noise in each locality as well as local airport officials can.
- FAA has no local accountability
- FAA would have to assume liability for the noise and further, waive immunity against lawsuits.

The argument made for pre-empting local government authority in this way is filled with catch-phrases like "patchwork quilt" of local requirements. We are given to believe that all the various local noise rules are overwhelming.

The air carriers are in fact not overwhelmed. They are continuing a magnificent tradition of successful service to the nation.

Local noise requirements that airports institute have overall shown a remarkable adaptability to the needs of the air carrier fleet and its progress. With a couple of exceptions, rules either allow operators to make noise and equipment decisions for themselves, (noise budgets) or time phase Stage 2/ Stage 3 ratio requirements toward the turn of the century.

Another point needs to be made. The future expansion of aviation lies in the future development of infrastructure. This is entirely dependent on local decision. If an airport or prospective airport has no way to affect aviation noise, local reaction and pressure will be even more adamant in the refusal to allow new airport development.

We urge that you reject any suggestion to weaken the powers of the airport proprietors.

NOISE AND THE COMMUNITY

Land use near airports is a constant subject of discussion. "If no one lived close enough to an airport to have a noise problem, we wouldn't have a problem. So let's regulate land use and keep them away."

Land use can be a powerful tool in preventing or avoiding an airport noise problem. N.O.I.S.E. and NLC support cooperative airport/ community action on such land use polices.

Land use loses its value as a tool against aviation noise when the land around an airport has already been developed to any significant degree. Changing land use today will not produce results for ten to fifteen years. Most of the noise impacted areas around our major airports are already largely developed. Practically speaking, we should not look to land use as a major part of the noise solution at these airports.

N.O.I.S.E. and the National League of Cities are working with FAA on an effort to work out methods of cooperative planning for aviation noise land use which will

- respect local government land use authority
- respect landowners' property rights
- define quid pro quo's in the land use bargain between the airport and the community

Mr. Chairmen, Aviation Noise is a major problem for the industry and for the communities affected by it. We are not going to solve it anytime soon. We may never solve it entirely. But we have to work at it, chipping away at it piece by piece until we get it to more manageable proportions.

These hearings, sir, are an important part of the that process. We trust that legislation resulting from the hearings will be another important advance.

Thank you for holding these hearings and for giving N.O.I.S.E. and the National League of Cities the opportunity to present these ideas.

The organizations are available to work with you and your staff in the future. I remain available for any questions now.

Wayne County Commission

SUSAN L. HUBBARD

COMMISSIONER DISTRICT 13
DEARBORN • DEARBORN HEIGHTS

WAYNE COUNTY BUILDING
600 RANDOLPH, SUITE 401
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224-0934

September 21, 1990

> "I just spent my Memorial Day weekend in Hell, spell that DEARBORN, MICHIGAN! I was blasted out of bed this holiday weekend at 6 a.m. from roaring jets. I feel as if I have moved next to the freeway."

This quote came from one of thousands of letters received by my office over the past ten months from citizens of traditionally peaceful residential communities within the County of Wayne, Michigan. I am Susan L. Hubbard, Wayne County Commissioner for District 13. These citizens are responding to a change in airplane departure and landing patterns initiated by the Federal Aviation Administration (FAA) in November, 1989.

Initially, the citizens were lied to by airport officials who told them that no change in flight patterns had been made. The Detroit Metropolitan Wayne County Airport (DTW) Director's office stated in a letter dated January 2, 1990:

> "I spoke to the FAA officials who manage DTW's control tower and they confirmed that no changes have been made in the departure patterns from Detroit Metropolitan Wayne County Airport which would have an impact on noise in residential areas. They are sending the aircraft out on the same headings as before."

Then, in a letter dated April 2, 1990 the DTW Airport Director wrote:

> "In late 1989, the FAA instituted changes in the routing of aircraft to all airports in the region, including Detroit Metro Airport. These changes affect the inbound and outbound routes of all instrument flight rule aircraft." He continued, "According to the FAA, the areas that had not previously been overflown will normally be crossed now by aircraft..."

Thus, citizens who have purchased homes in peaceful residential communities are now faced with unexpected, 24-hour, noise decibel levels exceeding the 85 decibel tolerable level. A New York Times article dated August 13, 1990, states that noise causes stress and hearing loss above 90 decibels. A jet taking off is cited as creating a 140 decibel reading. The article

states that prolonged exposure to noise decibel levels of 85 to 115 is linked with physical, mental and social problems ranging from hypertension to depression, from learning disabilities to birth defects. The article charts the decibel levels for the following activities:

-Rifle fired near ear	160 decibels
-Jet taking off	140 decibels
-Loud factory	100 decibels
-Alarm clock	80 decibels
-Rustling leaves	20 decibels

Source: "Noise" (Penguin, 1970); Bruel & Kjaer sound level meter.

To make matters worse, DTW airport officals announced in February, 1990 that almost 680,000 more people boarded passenger airplanes at Detroit Metro Airport in 1989 than in 1988. About half of these boardings are people changing planes.

Imagine, a residential community with high property values, admired for its tranquility and stability, waking up one November (1989) morning, without warning, to the sound of roaring jets at a 140 decibel level because the FAA decided it was time to change flight patterns. The following quotes are from letters my office has received since last November and reflect the sentiment of citizens throughout Wayne County whose lives were changed that November morning:

> "When we made the decision to purchase our home it was with great deliberation and attention paid to the quiet of the neighborhood and we paid a premium for this. Now suddenly our tranquility has been shattered by a few bureaucrats without regard to the impact it would have on its constituents daily lives. We will probably be forced to sell the homes we worked so hard for to obtain what we had as recently as this past November, a quiet and peaceful home."

> "I and my family are awakened in the morning by the roaring and rumbling of low-flying jets taking off from Metro Airport and we go to sleep at night subjected to the

same unnerving and annoying noise. Scores of airplanes fly overhead for hours at a time, two to three minutes apart. This intrusive, intensive, and constant noise pollution is changing the entire nature of a residential neighborhood."

"I am an 80 year old asthmatic widow. I am begging you to stop the airplanes from taking off directly ontop of my house at all hours of the day, early morning and night. I must get my rest or my lungs will become very weak and I will not be able to breathe. Please stop the noise before I die."

"If the airplane noise problem was occasional I would not be writing this letter. Occasional could mean every 10 or even 15 minutes between planes. There are times, usually Sunday afternoons, every weekday evening, and Saturday mornings, where the thunderous, loud, noisy jumbo jets are spaced 2-3 minutes apart. The significant problem with this is that it can occur for three to five hours in a row! non-stop."

"Since Nobember 1989, my family and I have noticed an enormous increase in noise as well as considerable rattling of windows and objects in our home. During our entire 18 years of living in this neighborhood, we have never had such continual loud noise from departing airplanes."

"Airplanes are flying almost constantly at low altitudes over our homes so it is difficult to carry on a conversation inside the house, let alone outside. The roar seldom fades. Before the noise from one plane begins to fade, noise from the next is rising to a peak."

"When we purchased our house we did not choose to live near a airport. Instead, we bought a home in a centrally located suburb, with good schools, mature neighborhoods, and a small town atmosphere. The recent rerouting of takeoffs over our home, however, is distrubing. If the flight paths are not changed this community will be unliveable. What saddens us is the destruction of a very pleasant neighborhood."

"I am very distrubed to have purchased a home only to discover that all Metro Airport traffic travels VERY LOW and directly over MY HOME. From 6:30 a.m. until 10:00 p.m., a plane travels over my home on an average of once every thirty-eight seconds. I counted them!!! I am even able to read the airline's name on the body of the plane. I must run my central air system 24 hours a day because I

cannot keep the windows open. I have a 4-month old infant who cannot sleep. I am angered to have paid $120,000. for a home which does not protect me from this awful noise pollution. I cannot stand the noise and I will have to do something, either a class action lawsuit or move my family out of this community."

As you can see the FAA's unilateral change of airtraffic patterns is destroying residential communities. It is imperative that the FAA notify communities in advace before such drastic changes in flight patterns are made ever again. The particular communities I represent are devastated over the new flight tracks over their homes. These communities never experienced such noise levels in their history.

I urge the United States Congress to require the FAA to adopt a national policy for notifying communities prior to any change in flight patterns. Further, I urge the adoption of a notification process that will afford procedural due process protections such as public hearings, before any drastic changes in flight tracks are implemented by the FAA. An environmental assessment should also be conducted prior to any changes.

In addtion, it is imperative that a uniform national policy be adopted with regard to the phasing-out of Stage-II (DC-9s and 727s) aircraft. About 55 percent of jets flying in this country are Stage-II and it is this aircraft that is responsible for creating much of the noise.

Respectfully submitted,

Susan L Hubbard

Susan L. Hubbard
Wayne County Commissioner
600 Randolph Suite 401
Detroit, MI 48226

FEDERAL AVIATION NOISE POLICY

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES

PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SUBCOMMITTE ON AVIATION

ROBERT A. INNOCENZI, DEPUTY COMMISSIONER

NEW JERSEY DEPARTMENT OF TRANSPORTATION

SEPTEMBER 25, 1990

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON A PROBLEM THAT NOT ONLY AFFECTS THE PEACE AND QUIET OF MANY COMMUNITIES IN NEW JERSEY BUT ALSO THREATENS THE HEALTH AND WELL-BEING OF MILLIONS OF AMERICANS NATIONWIDE. ON BEHALF OF GOVERNOR JIM FLORIO AND THE STATE OF NEW JERSEY, I WOULD LIKE TO JOIN WITH THE MANY CITIZENS OF NEW JERSEY SEEKING RELIEF FROM AIRCRAFT NOISE.

OVER 7 MILLION PEOPLE IN THE U.S. ARE IMPACTED BY AIRCRAFT NOISE. RECENT STUDIES SHOW THAT AIRCRAFT RAILROAD AND HIGHWAY TRAFFIC NOISE IS A HINDRANCE TO 6.5 MILLION PEOPLE DURING CONVERSATIONS, 50 MILLION PEOPLE TRYING TO SLEEP AND 81 MILLION PEOPLE TRYING TO RELAX. THE FEDERAL AVIATION ADMINISTRATION (FAA) ESTIMATES THAT 3.2 MILLION PEOPLE LIVE IN AREAS THAT ARE INCOMPATIBLE FOR RESIDENTIAL USE BECAUSE OF AIRCRAFT NOISE.

NOISE OF THIS NATURE IS NOT ONLY A NUISANCE - IT CAN BE A HEALTH THREAT. EPA STUDIES HAVE SHOWN NOISE AS AN IMPORTANT CAUSE

OF PHYSICAL AND PSYCHOLOGICAL STRESS. IN AN ECONOMIC SENSE, NOISE CAN ALSO LOWER REAL ESTATE VALUES AS THE AFFECTED AREAS BECOME LESS DESIRABLE AS PLACES TO LIVE.

MR. CHAIRMAN, FOR THE LAST 3 YEARS, THOUSANDS OF OUR STATE'S CITIZENS HAVE HAD TO ENDURE EXCESSIVE AMOUNTS OF AIRCRAFT NOISE AS A RESULT OF THE FEDERAL AVIATION ADMINISTRATION'S (FAA) EXPANDED EAST COAST PLAN. IN ADDITION, FOR YEARS, RESIDENTS CLOSE TO NEWARK AIRPORT AND ACROSS FROM PHILADELPHIA INTERNATIONAL AIRPORT IN SOUTH JERSEY, HAVE FACED CONSTANT HIGH NOISE LEVELS.

NEW JERSEY IS CONCERNED THAT ENVIRONMENTAL NEEDS HAD NO PLACE IN THE DECISIONS TO PUT THE EXPANDED EAST COAST PLAN IN PLACE. NO ENVIRONMENTAL IMPACT STATEMENT (EIS) WAS CONDUCTED DESPITE THE FACT THAT THE LAW REQUIRES AN EIS WHEN AIR ROUTES WILL CAUSE A SIGNIFICANT CHANGE IN ACTIVITY OVER CERTAIN AREAS. THE CITIZENS HERE CAN ATTEST TO THE FACT THAT SIGNIFICANT CHANGES IN

NOISE LEVELS HAVE OCCURRED AND THAT NUMEROUS STUDIES HAVE BEEN CONDUCTED BOLSTERING THIS FACT.

WHEN GOVERNOR FLORIO SERVED HERE IN CONGRESS, HE DIRECTED BOTH PHILADELPHIA AIRPORT AND THE NEW YORK-NEW JERSEY PORT AUTHORITY TO CONDUCT NOISE STUDIES AT THEIR AIRPORTS. LIMITED NOISE STUDIES WERE CONDUCTED AND SHOWED A HIGH INCREASE IN NOISE AT THESE AIRPORTS.THE NOISE STUDIES, AS WELL AS TWO GENERAL ACCOUNTING OFFICE (GAO) STUDIES GOVERNOR FLORIO REQUESTED, POINTED TO A NUMBER OF PROBLEMS IN THIS AREA THAT NEED TO BE ADDRESSED.

WHEN GOVERNOR FLORIO WAS INVOLVED IN THE 1978 QUIET COMMUNITIES ACT, CONGRESS CLEARLY INTENDED THAT THE DEPARTMENT OF TRANSPORTATION SHARE A RESPONSIBILITY WITH THE ENVIRONMENTAL PROTECTION AGENCY FOR DRAFTING NOISE STANDARDS AND PROVIDING FEEDBACK ON THE ENVIRONMENTAL IMPACT OF ROUTING DECISIONS. WHEN THE REAGAN ADMINISTRATION ABOLISHED FUNDING FOR EPA'S OFFICE OF NOISE ABATEMENT AND CONTROL IN 1981, ENVIRONMENTAL PROTECTION IN THIS AREA WAS GREATLY DECREASED.

THE FLORIO GAO REPORT ISSUED IN LATE 1989 FOUND THAT STATES HAD BEEN UNABLE TO PICK UP WHERE EPA LEFT OFF AND THE RESULT HAS BEEN AN ABSENCE OF ENVIRONMENTAL PROTECTION.

GOVERNOR FLORIO HAS REQUESTED SECRETARY SKINNER'S PERSONAL ATTENTION TO THE ISSUE OF AIRCRAFT NOISE AS A RESULT OF THE EXPANDED EAST COST PLAN. AT THE TIME THE PLAN WAS IMPLEMENTED, THE FAA CLAIMED THAT THE PLAN WOULD REDUCE FLIGHT DELAYS AND EXPAND CAPACITY. NEW JERSEY IS NOT CONVINCED THESE GOALS HAVE BEEN MET. WE BELIEVE THAT ENOUGH TIME HAS LAPSED TO EVALUATE IF THE PLAN DID WHAT IT WAS INTENDED TO DO. THE GOVERNOR HAS CALLED ON THE FEDERAL GOVERNMENT TO IMMEDIATELY UNDERTAKE A DETAILED REVIEW BY AN INDEPENDENT EXPERT OF THE EXPANDED EAST COAST PLAN TO DETERMINE WHETHER THE PLAN REALLY DID HAVE A POSITIVE AFFECT ON AIR TRAFFIC DELAYS AND CAPACITY. THIS EXAMINATION SHOULD ALSO INCLUDE AN IN-DEPTH STUDY OF THE ENVIRONMENTAL IMPACT OF THE CHANGES IN THE FLIGHT PATTERNS.

IN ADDITION, THE GOVERNOR STRONGLY SUPPORTS THE FIVE POINT PLAN RECENTLY ANNOUNCED BY SENATORS BRADLEY AND LAUTENBERG TO ADDRESS AIRCRAFT NOISE. THE PLAN CALLS FOR GREATER USE OF AIRSPACE OVER COASTAL WATERS BY COMMERCIAL AIRCRAFT, THE PHASING OUT OF STAGE 2 AIRCRAFT OPERATIONS, THE DEVELOPMENT OF A NATIONAL AVIATION NOISE POLICY, AND THE REQUIREMENT OF AN ENVIRONMENTAL ASSESSMENT FOR MAJOR ROUTE CHANGES.

THOUGH THE FAA HAS, FOR MANY YEARS, EXPRESSED AN INTEREST IN PHASING OUT THE NOISIER STAGE 2 AIRCRAFT, PRESSURE FROM THE INDUSTRY AND FROM OMB HAVE SQUASHED THAT EFFORT. WHEN SECRETARY SKINNER ISSUED HIS LONG-AWAITED NATIONAL TRANSPORTATION POLICY EARLIER THIS YEAR, IT WAS MADE KNOWN THAT THOUGH HIS EARLIER DRAFTS CONTAINED STATEMENTS SUPPORTING THIS PHASE-OUT, THIS SECTION WAS LOST IN THE FINAL DOCUMENT. THE EFFORT TO PHASE-OUT STAGE 2 HAS ALSO BEEN ENDORSED BY THE NATION'S GOVERNORS.

FINALLY AND MOST IMPORTANTLY, THE FAA NEEDS TO BE DIRECTED TO BE RESPONSIVE TO THE CONCERNS OF THE COMMUNITIES. JUST RECENTLY, THE FAA REROUTED AIRPLANES SO THEY WOULD NOT DISTURB THE U.S. OPEN TENNIS TOURNAMENT GOING ON IN NEW YORK. NEW JERSEY RESIDENTS HAVE BEEN ASKING FOR RELIEF FOR THREE YEARS WITH NO SIGNIFICANT RESULTS BUT A REQUEST TO CHANGE AIRPLANE ROUTES FOR A TENNIS TOURNAMENT WAS RESPONDED TO IN TWO DAYS.

THERE ARE SHORT TERM MANAGEMENT ACTIONS WHICH THE FAA COULD TAKE IMMEDIATELY TO HELP OUR RESIDENTS. FOR EXAMPLE, THE FAA'S EXISTING PROCEDURES AT NEWARK AIRPORT TAKE INTO CONSIDERATION SOME OF THE NOISE IMPACTS ON COMMUNITIES BY ATTEMPTING TO ALTERNATE THE PLANES' FLIGHT PATTERNS TO AVOID PLANES FLYING ONE AFTER ANOTHER OVER THE SAME RESIDENTS. WE UNDERSTAND THAT FAA REGIONAL STAFF HAS ADMITTED TO AFFECTED RESIDENTS THAT THIS POLICY IS NOT ALWAYS ADHERED TO AND THAT CONTROLLERS FIND IT EASIER TO CONTINUE TO DISPATCH PLANES OVER THE SAME, FAMILIAR ROUTES. THIS PRACTICE IS UNACCEPTABLE AND THE GOVERNOR HAS URGED THE FAA TO BEEF UP THE

QUALITY CONTROL AT NEWARK AIRPORT SO THAT RESIDENTS CAN, AT LEAST FOR NOW, GET THE MINIMAL RELIEF THE FAA INCLUDED IN THEIR PLANS.

IN CLOSING, THE STATE SUPPORTS INCREASED FEDERAL FUNDING TO FULLY IMPLEMENT THE NOISE CONTROL ACT, AND TO ALLOW LOCAL GOVERNMENTS TO SET STRICTER NOISE LEVEL CONTROLS THAN THOSE SET BY THE FEDERAL GOVERNMENT. WE WOULD LIKE TO SEE EPA'S ROLE IN NOISE CONTROL RESURRECTED BY ESTABLISHING AN EPA TRANSPORTATION NOISE PROGRAM THAT INCLUDES PERIODIC REVIEW OF NOISE STANDARDS, ENFORCEMENT AND TECHNICAL ASSISTANCE TO STATES AND LOCAL GOVERNMENTS.

IT IS CRITICAL TO THE WELL BEING OF OUR CITIZENS AND THE FUTURE GROWTH OF THE AVIATION INDUSTRY THAT THE FEDERAL GOVERNMENT WHICH IS VESTED WITH THE RESPONSIBILITY FOR THE NATION'S AIRSPACE TAKE BOLD, RESPONSIVE ACTIONS AND IDENTIFY NEW, CREATIVE WAYS TO ADDRESS THE ISSUE OF AIRCRAFT NOISE.

MR. CHAIRMAN, THE STATE OF N.J. STANDS READY TO ASSIST YOU AND THE COMMITTEE IN YOUR EFFORTS.

THANK YOU.

metropolitan washington
COUNCIL OF GOVERNMENTS
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(202) 962-3200 FAX: 962-3201

Testimony of the Honorable Betty Ann Kane,
Member, Council of the District of Columbia,
Chair, Metropolitan Washington Council of Governments
Board of Directors, and
Chair, Committee on Noise Abatement at National and Dulles Airports

to the Subcommittee on Aviation, Public Works and Transportation
U.S. House of Representatives

September 25, 1990

SUBJECT: Federal Aviation Noise Policy

Mr. Chairman and Members of the Subcommittee:

My name is Betty Ann Kane. I am pleased to provide comments on Federal Aviation Noise Policy in my capacity as Chair of the Metropolitan Washington Council of Governments' Board of Directors, and Chair of the COG's Committee on Noise Abatement at National and Dulles Airports (CONANDA). I am, for the record, also Vice Chair for Legislative Affairs of the National Organization to Insure a Sound Environment (N.O.I.S.E.), and a member of the Board of Directors of the National League of Cities. The overall policy considerations addressed here today by these national organizations are amply illustrated by our experience in dealing with airport noise pollution at the local and regional level.

The issue of aviation noise and its impact on communities is very important to the residents and local elected officials of this

region. The CONANDA was established by the COG Board of Directors in 1985 for the purpose of recommending airport noise mitigation measures to the Federal Aviation Administration, then the operator of National and Dulles Airports. In July 1987, the Metropolitan Washington Airports Authority Board of Directors--the new operator of the two airports -- designated CONANDA as the Authority's "preferred mechanism" for community input into noise mitigation and noise planning.

CONANDA's membership consist of local elected legislative and executive branch officials, citizen representatives, the Metropolitan Washington Airports Authority, Air Transport Association of America, Air Line Pilots Association, and the National Business Aircraft Association. Over the past five years COG's Committee on Noise Abatement at National and Dulles Airports has reviewed many noise issues related to aviation. By letter dated July 11, 1990, I recently commented on the noise related provisions of the FAA/DOT Working Group's proposed National Transportation Policy recommendations to Secretary Skinner and FAA Administrator Busey. The issues before the Working Group largely correspond to those of interest to the Subcommittee. Our comments and recommendations are quite detailed and more specific than time allows today. Therefore, I have attached a copy of my letter to this testimony and request that it be made a part of the record.

Today I will only highlight several major issues that have been identified as being of particular interest to this hearing.

The Need To Respect Local Decision-Making

National policy has long been that airports are to be built, owned and operated by local governments or local authorities. Indeed, in 1986, the Congress perfected this doctrine by transferring the only two federally operated airports, National and Dulles, to a regional authority. For example, there is clear value in setting a national timetable for phase out of Stage 2 commercial planes, and similar matters. The Board of Directors of the Council of Governments has recommended an accelerated phaseout of Stage II commercial aircraft from the domestic fleet. COG supports the need for a strong national policy regarding the regulation of noise emissions from commercial aircraft to protect commerce and to improve the noise environment. However, we believe that national standards should be established as minimums - a floor - and should involve no preemption of additional measures that are appropriate to a particular local situation. In addition, any national standard must clearly "grandfather" existing rules and agreements.

The Limits of Land Use As a Noise Mitigation Measure

COG's experience has clearly illustrated the limitations of relying on land use planning as a major component of noise mitigation. While appropriate for new airports and for undeveloped areas, land use regulation is of little value in long established communities that pre-date federal airport grants. What should we do - rezone the 100 year old homes of Capitol Hill or the 200 year old port of Old Town Alexandria- or rezone the Mall, the Capitol and the White House to industrial uses that conform to FAA's list of compatible uses in noise impacted areas? We are doing our best; the D.C. City Council has recently enacted, at my request, a "noise overlay zone" designed to protect residential uses impacted by National Airport.

The Need for a New Metric to Evaluate Noise Pollution

65 Ldn is not an accurate measure of the effects of airport noise. In 1983-84 the FAA conducted, at COG's request, a test of alternate flight paths from National Airport (the so-called Scatter Plan). Professional surveys conducted as part of this test showed significant annoyance at 60, 55, and below. Our data suggest that 55 Ldn is a much more accurate level to use in planning land use, flight paths, day/night restrictions and liability matters. In addition, our data and our experience suggest that Ldn itself,

which is a blend of averaged noise levels and weighted for day and night flights, is a very unrealistic way to measure noise exposure and human reaction to it.

The frequency of overflights, peak noise intensity and duration of sound are equally or sometimes more important measures. The experts tell us that one Stage II commercial overflight is equal-- in terms of cumulative Ldn exposure--to many comparable Stage III operations. Although we understand the acoustical logic behind this, it is not acceptable to our region's residents who are sensitive to the number of overflights as well as their sound intensity. We were pleased to learn that the FAA and Environmental Protection Agency are undertaking a study to assess the adequacy of Ldn. We hope this is a serious effort that will not be determined by interests vested in the current 65 Ldn standard. I note that even baseball, that bastion of enshrined statistics has recognized that something was left out and has developed a new measure -- the on base average--and I am sure that the aviation industry will survive a new and more realistic standard to measure performance, also.

Conclusion

Mr. Chairman, these and other aviation noise issues are detailed in the attached correspondence. I want to thank you for the opportunity to present Washington the region's views on these very important issues affecting residents of our region and the

nation.

In keeping my remarks to the time allotted, I have presented the views of the Council of Governments in a highly condensed manner. However, our letter to Secretary Skinner provides additional elaboration of our concerns.

Again, Mr. Chairman, I thank you for this opportunity to appear before the Subcommittee. Our local communities appreciate the interest in this vital issue to the health and right to quiet enjoyment of our homes and recreational areas.

metropolitan washington
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July 11, 1990

Mr. Samuel K. Skinner
Secretary
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Mr. Secretary:

On behalf of the Metropolitan Washington Council of Governments Committee on Noise Abatement at National and Dulles Airports (CONANDA), I am pleased to provide these comments on the various recommendations being developed by the FAA/DOT Aviation System Capacity Task Force Noise Working Group for the airport and noise related portions of the National Transportation Policy. These positions have been developed by CONANDA, a committee established by the Council of Governments (COG) Board of Directors in 1985 for the purpose of providing a regional policy perspective on airport noise matters on behalf of the local governments of the Washington, D.C. metropolitan area. Also, the COG Board has taken positions on several noise issues which are identified in the body of this document.

At the April 24, 1990 Noise Working Group meeting, five goals were adopted. These goals were to:

1. Revise and finalize recommendations;

2. Review and provide recommendations on Part 150;

3. Establish a public information campaign to support the program;

4. Identify other noise/capacity issues; and,

5. Support economic studies as necessary.

While CONANDA has not taken positions specific to all five goals, we have addressed Part 150 land use compatibility, accelerated use of Stage 3 aircraft, Stage 2 aircraft phaseout and other noise related issues. These positions have been developed over the past few years after reviewing the extensive body of technical information regarding human response to aircraft noise, technical options available to reduce aircraft noise exposure, and, through the Part 150 process, means of developing noise mitigation strategies that will achieve a balance between air transport service needs and environmental quality at Washington National Airport and Dulles International Airport.

CONANDA is quite aware that the Noise Working Group must develop national transportation recommendations which must be designed to accommodate many

unique circumstances and our comments attempt to reflect this perspective. These comments are discussed under three topics: (a) local airport use restrictions and airport proprietors' rights to establish noise rules and regulations; (b) Part 150 planning; and (c) aircraft fleet modernization.

Local Use Restrictions and Airport Proprietors Rights

The Committee has expressed concern regarding the airport "proprietor's rights" to make noise rules. It is the general consensus of CONANDA that the airport related provisions of the national transportation policy should not inhibit the current authority airport operators have to establish and enforce noise regulations as long as they do not unduly inhibit commerce, discriminate, or interfere with safety.

Part 150 Planning and Land Use Compatibility

At its February 14, 1989 meeting, the CONANDA commented to the Federal Aviation Administration on its proposed rulemaking for administering its Part 150 Noise Mitigation and Land Use Compatibility program.

1. Noise Reduction and Land Use Emphasis

The first comment addresses the fundamental goal of the Part 150 process in attempting to bring balance and equity to community-proprietor relationships on noise impacts affecting nearby land uses and to air transportation service needs. The Committee is of the opinion that both airport noise reduction and land use policies need to be addressed in developing Part 150 noise abatement strategies. However, noise reduction should be the focus of Part 150 studies when the airport is surrounded by predominantly developed land (as is the case with Washington National Airport) and land use compatibility should be emphasized where the airport is surrounded by undeveloped land.

2. Participation in Part 150

As currently constituted, FAR Part 150 is a "proprietor's" program. It is voluntary, and regulations include very limited guidance as to the nature of community participation/consultation required. It is the sense of the CONANDA that the Part 150 planning process would be enhanced if airport proprietors and nearby communities were true "joint venture" partners in this process from the very beginning. A more meaningful dialogue for the resolution of issues would be achieved under such an agreement.

3. Threshold Level of Noise Exposure

Currently, 65 Ldn is the threshold used in defining airport noise impacts and for defining non-compatible uses near airports. While CONANDA understands the reasoning behind the selection of the 65 Ldn contour for these purposes, we have found in the Washington area that there is significant neighborhood annoyance toward airport noise at Ldn exposures of significantly less than 65 Ldn.

The reason for this belief is the extensive published literature relating community annoyance to aircraft noise Ldn, and primary survey data obtained from households in the Washington area in 1983-84 documenting these impacts. In short, it is the Committee's belief that the sole use of the 65 Ldn contour as the relevant "noise threshold" greatly understates the magnitude of the airport noise problem. In farther out areas, an "event based" approach to assessing airport noise impacts may also have validity, both from the point of location of impacts and time of day of impacts (particularly at night).

4. Part 150 and Master Plan Processes

The Part 150 process would be enhanced if airport master plans and Part 150 studies were conducted simultaneously. Moreover, such combined studies should take a longer-term view of the relevant time horizon in the development of future year noise contours. Local governments, in making land use decisions, need to know whether noise contours are going to change significantly in the future. To cite, once again, the situation in the Washington area, Master Plan forecasts for National Airport have been prepared for the year 2005; there is no reason why associated noise contours cannot also be readily prepared. Also, the National Airport Master Plan was approved by the Metropolitan Washington Airports Authority in March 1988 but the Part 150 planning study was not approved until May 2, 1990.

5. Part 150 Appeal Process

The CONANDA has discussed several other issues related to the Part 150 process, including the need for an appeal process for airport proprietor recommendations to the FAA, advance Air Traffic Control "sign-off" on certain airport noise mitigation procedures, and the need to verify aircraft noise exposure through monitoring programs. With respect to the first two of these points, the Committee believes that adequate procedures are currently in place to address these concerns. On the subject of noise monitoring, the Committee is already on record as strongly supporting the need for noise monitoring for enforcement purposes, public reporting, computer modeling and noise exposure tracking purposes.

Acceleration of Phaseout of Stage II Commercial Aircraft From the Domestic Fleet

In March 1989, CONANDA developed comments on FAA's proposed rulemaking on the acceleration of phaseout of Stage II commercial aircraft from the domestic fleet. The Committee recommended, and the COG Board passed, Resolution R-7-89 (resolution attached) on March 8, 1989 which recommended an accelerated phaseout of Stage II commercial aircraft from the domestic fleet. Among other things, it calls for no further additions of Stage II aircraft after December 31, 1989. The resolution also cites the need for a strong national policy regarding the regulation of noise emissions from commercial aircraft in order to protect commerce and to improve the noise environment. In the absence of a stronger federal leadership role on airport noise abatement, airport proprietors and communities are forced to take unilateral actions to reduce noise impacts. These positions are discussed in more detail below.

Need for Strong Federal Policy on Aircraft Noise

In the absence of a stronger federal leadership role on airport noise abatement, airport proprietors and communities are forced to take unilateral actions to reduce noise impacts. Recent years have seen a growth of airport-specific measures such as "all Stage 3" rules, "noise budgets" and other measures. The FAA must understand that the problem of aircraft noise exposure is so severe that local elected officials and airport proprietors are duty bound to take whatever steps are available. The public is demanding that aircraft noise exposure be reduced, and at the earliest possible moment.

It must also be understood that the reduction of noise exposure from aircraft is necessary to protect commerce facilitated by the national air transportation system. Airport proprietors that have instituted new and novel means of controlling airport noise have done so in the realization that such measures are necessary to preserve the benefits of such service by making environmental impacts more tolerable.

There is, fortunately, consensus that the use of the quieter Stage 3 aircraft and elimination of the noisier Stage 2 operations can improve the noise environment. The Federal Government can be very helpful in this regard, especially as the airlines face the prospect of an aging fleet of commercial aircraft. and as re-engining opportunities for older aircraft improve. The question is what the FAA can do that will accelerate the phaseout of the older Stage 2 planes.

Timetable for Phase-out of Stage 2 Aircraft

In its April 11, 1986 "Report to Congress on Alternatives Available to accelerate Commercial Aircraft Fleet Modernization" the FAA projected that 88.7% of the U.S. fleet would be Stage 3 by the year 2005. While this projection will be reassuring to some, the laws of physics will dictate that perceived noise exposure improvements will occur only toward the end of this period, since large reductions in aircraft noise energy must be achieved to gain marginal improvements in the noise environment. In other words, the noisiest operations must be eliminated.

The FAA's 1986 projection also showed that the total number of commercial aircraft in the fleet would grow from 3484 (1990) to 4484 (2005). This reflects the replacement of Stage 2 aircraft in the fleet by new Stage 3 aircraft and a significant retirement of the older Stage 2 planes, from 2003 (1990) to 505 (2005). The FAA is also predicting generally increased operations at the Nation's airports, due to "hubbing" and increased demand for air travel in the range of 4 to 7 percent annually between the years 1986 and the year 2000 for large "hub" airports. Projections for National Airport prepared as part of its ongoing Part 150 study show an increase in annual operations of air carriers of from 187,000 to 203,000 between the years 1986 and 2005 with a virtually 100% Stage 3 mix by 2005. (The Metropolitan Washington Airports Authority has subsequently announced its intention to require airlines to have a 100% Stage 3 commercial fleet by the end of 1998.)

This scenario of Stage 2 replacement may, in fact, be too optimistic. There is evidence that the retirement of the Stage 2 fleet--absolutely essential for noise reasons--may not be occurring, since many of these older planes still have useful economic life, in the face of increased market demand. At the same time the European Community, with 1000 Stage 2 aircraft, has implemented a Stage 2 non-addition policy as of Oct. 31, 1990. To the extent the Europeans dispose of this fleet, these planes, because of their useful economic life, could either come to the U.S. or to the Third World by importation (domestic manufacture of Stage 2 planes has ceased).

COG recommends that the FAA, through the Part 91 and the Part 36 certification process, end domestic operations of Stage 2 aircraft by December 31, 1990. Further, it was recommended that there should be no further additions of heavy (over 75,000 pounds) Stage 2 aircraft to the fleet, effective Dec. 31, 1989.

Public Law 90-411 clearly gives to the FAA the responsibility and authority to regulate aircraft noise emissions at the source. In fact, the FAA has used this authority over the years to phase out Stage 1 aircraft and to certify Stage 2 and Stage 3 airplanes.

The reason that COG favors a strong Stage 2 phaseout policy is that the history of noise abatement efforts at National Airport has been long and difficult since turbojet aircraft were introduced in 1967. Almost every feasible means of reducing airport noise at National has been studied, tested, or implemented including Potomac corridor arrival and departure paths, thrust cutback on takeoff, restriction of "runups," and alteration of departure paths. The options for further meaningful reduction of noise exposure are increasingly limited. The impacts upon communities of noise exposure at National have been well documented over the years and demonstrate a predictable annoyance response to aircraft Ldn. Also, land use policies near National are, for the most part, fixed and offer little opportunity for future mitigation. In fact, many of them were settled prior to the Civil War. If noise is to be meaningfully reduced at National, given the airport's current role in the region's air transportation system, Stage 2 operations will have to be substantially eliminated, and at a rate faster than envisioned by the FAA through normal turnover of the fleet.

The principal objection to an accelerated Stage 2 phaseout is economic. The FAA has estimated that the accelerated phaseout of Stage 2 aircraft by the year 2000 would be an additional $3.8 billion. This is a substantially smaller cost than the $84 billion initial cost price tag used by the industry. COG believes that the FAA's estimate is sustainable by the Nation, even given all other pressing priorities for capital investment.

The FAA should expedite the issuance of certificates for Stage 2 re-engining designs which have demonstrated compliance with Stage 3 noise standards. COG feels that this would particularly benefit the Washington area, since the predominant aircraft serving National airport are models in the B727, B737 and DC9 series, many of them Stage 2 and candidates for re-engining.

One of the arguments put forward against accelerated Stage 2 phaseout has been the undeniable high cost to airlines of purchase of new Stage 3 aircraft. However, as pointed out above, opportunities for the Stage 3 certification of re-engined Stage 2 planes looks increasingly promising from an economic point of view. This is additionally attractive given the current 4-year industry backlog of Stage 3 aircraft orders. At this time there is one vendor of a re-engining technology that has been certified as Stage 3 by the FAA and others are in various stages of design and testing.

The FAA, in certifying "propfan" or "unducted fan" propeller technology as Stage 3 should take extreme care to ensure that these aircraft, in their noise emission characteristics, not exacerbate the noise environment during takeoff, landing, or overflights due to their unique noise signature.

This is a new generation of aircraft (recently seen in TV commercials) that is of a particularly energy efficient design, but has not yet been

certified as Stage 3 by the FAA. There is some concern in acoustical circles that although, given current certification standards used by the FAA, they may technically be Stage 3, their noise characteristics may be unfavorable, particularly in overflight mode.

The FAA should end the re-registration of Stage 2 aircraft as of July 1, 1991 (at present, when aircraft are sold they are re-registered by the FAA.) This recommendation, in conjunction with expediting the issuance of certificates for Stage 2 re-engining designs, would act as an incentive for owners of old Stage 2 planes to dispose of such aircraft (assuming remaining useful economic life beyond the year 2000) to new owners willing to re-engine by the year 2000, after which no Stage 2 operations would be permitted.

Conclusion

Again, the Council of Governments Committee on Noise Abatement at National and Dulles Airports considers the issues discussed in the body of this document to be critical to reducing airport noise exposure. We look forward to seeing the final recommendations of the Noise Working Group.

Sincerely yours,

Betty Ann Kane

Betty Ann Kane, Chairman, COG Board of Directors and
Chairman, Committee on Noise Abatement
at National and Dulles Airports

R-7-89
Adopted March 8, 1989

Metropolitan Washington Council of Governments
1875 Eye Street, N.W.
Washington, D.C. 20006

Resolution Recommending Accelerated Phaseout of Stage 2
Commercial Aircraft from the Domestic Fleet

WHEREAS, airport noise is a serious national and local problem, especially at Washington National Airport; and

WHEREAS, the Board of Directors of the Metropolitan Washington Council of Governments (Council), the Committee on Noise Abatement at National and Dulles Airports, and the Metropolitan Washington Airports Authority have endeavored to identify feasible means of reducing airport noise exposure attributable to Washington National Airport; and

WHEREAS, there is a need for a strong national policy regarding the regulation of noise emissions from commercial aircraft in order to protect commerce and to improve the noise environment; and

WHEREAS, the Federal Aviation Administration, under Public Law 90-411 has the responsibility and the authority to regulate aircraft noise emissions at the source;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Board of Directors of the Metropolitan Washington Council of Governments recommends that the FAA take the following actions:

1. Domestic operations of Stage 2 aircraft should be ended by Dec. 31, 1999. No further additions of Stage 2 aircraft should be permitted after December 31, 1989.

2. Certification for Stage 2 re-engining designs which have demonstrated compliance with Stage 3 noise standards should be expedited.

3. Certification of new generation "propfan" or "unducted fan" propeller technology should ensure that such aircraft do not worsen the noise environment.

4. The re-registration of Stage 2 aircraft should be ended as of July 1, 1991.

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT:

The Executive Director is authorized to transmit this resolution and accompanying letter comments to the appropriate FAA Docket.

I hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Directors of the Metropolitan Washington Council of Governments at its meeting of March 8, 1989

Eileen M. Smith
Clerk to the Board of Directors

BEFORE THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON AVIATION

COMMENTS OF THE CITY OF LONG BEACH REGARDING FEDERAL AVIATION NOISE POLICY	)

COMMENTS

OF

THE CITY OF LONG BEACH

JEFFREY A. KELLOGG, Vice Mayor
JOHN R. CALHOUN, City Attorney
ROGER P. FREEMAN, Deputy City Atty.
333 West Ocean Boulevard, Ste. 1100
Long Beach, California 90802

September 27, 1990

EXECUTIVE SUMMARY

The City of Long Beach, like many airport operators, is keenly interested in the issue of noise. The City has long been active in developing regulations intended to reduce the impact of noise on the surrounding community. The City is also involved in litigation with homeowners living around the Airport who assert that noise from aircraft operations has damaged their properties by reducing them in value. The City has successfully defended one set of suits in this area, but lawsuits involving over 700 indvidual properties remain to be tried.

1. Based on the experience of the City of Long Beach in operation of its Airport, and what we understand to be the experience at neighboring airports in Burbank and Orange County, California, it seems clear that there are siginificant benefits to be derived from eliminating Stage 2 aircraft at any given airport and replacing them with Stage 3. These benefits are measurable both in terms of noise reduction and increased capacity. Long Beach would not benefit from a Stage 2 phase out since the fleet at Long Beach Airport is already all Stage 3.

2. Actions by local airport proprietors to restrict aircraft operations are presently reviewable under the Equal Protection Clause, the Due Process Clause and the Commerce Clause of the United States Constitution. These provisions of the U. S. Constitution provide substantial protection for

the national interest and yet provide a fair test which also protects the interest of the local airport proprietor. So long as the current thinking of the U. S. Supreme Court in interpreting these three provisions is followed, there is no need for a new standard. If, however, the federal government wishes to review local noise control rules under a different standard or a different reading of these constitutional provisions than what is supplied by the United States Supreme Court, or if Congress enacts regulations affecting the review of these regulations, then it is clear that a new standard needs to be established and that standard needs to explicitly state that airport operators are permitted to establish restrictions including single event noise limits at their airport which limit their liability and which reduce cumulative noise to a level of 65 CNEL or 65 LDN.

3. If there were to be a national standard, it should follow the pattern in the Baker and Institoris cases. A statute of limitations for inverse condemnation damages should be specified. The right of airport operators to acquire prescriptive easements should be specified. The time limits, if any, in which nuisance damages would be applicable should be specified. The regulation should specify which nuisances are continuing or permanent. It is suggested that the California rule of continuing nuisance flies in the face of all previously existing law and that the appropriate standard is that airports are permanent nuisances.

Finally, a standard for liability should be established, such as 65 CNEL or 65 LDN. In addition to this, it may be appropriate to specify that even if a prescriptive avigation easement has been acquired at some point in time, increases in cumulative noise of 1.5 decibels would result in renewed liability. This is consistent with a new California statute.

4. Actions which tend to increase capacity or noise will have adverse environmental impacts. Environmental ills have economic costs. Increasing capacity may be economically beneficial for some. Regulations which reduce noise may impose some incidental economic costs in some areas in order to achieve environmental benefits. Conversion to an all Stage 3 fleet will have economic costs for equipment, environmental benefits in noise reduction and at least on a tail for tail basis, a benefit in reduced fuel cost and usage (though this may be counterbalanced by increased operations).

5. The City of Long Beach has no specific comment on airspace regulations.

6. There is doubt about the efficiency of land use actions to provide real environmental benefits in built up areas near airports, though such benefits may be significant as advanced planning to avoid construction of residences near airports. Any costs of land use efforts or sound attenuation should be borne by the federal government or the users of the system.

INTRODUCTION

The City of Long Beach is the owner and operator of very active airport serving both general aviation and commercial aviation. Over much of the last twenty years, the Airport has been one of the busiest general aviation airports in the United States. In the last ten years, there has been steady growth, partly as a result of litigation, in the number of air carrier jet flights and in the number of passengers carried from the Airport. Today, there are forty-one scheduled air carrier flights, four of which are air cargo flights. The Airport presently serves approximately 1.3 million annual passengers.

The Airport is located near the geographic center of the City and is surrounded on three sides by residential development. That residential development is of approximately the same age as the Airport. This is not one of those cases where discussion of which came first - the Airport or the residents - really makes any difference.

Since the beginning of the use of jet transports for air carrier service at the Airport in the early 1970's, there has been steadily increasing community opposition to noise generated from operations at the Airport. The residential community is very close to the Airport and is significantly affected by the operations. Complaints have taken the form over the years of political action, including recall of City Council members, many public hearings and

heavily attended public meetings and has led ultimately to litigation between the City and a large number of homeowners in regard to the noise at the Airport. The City has successfully defended those cases which have gone to trial, but cases involving more than 700 individual properties remain to be tried.

During the period beginning in 1981, the City of Long Beach has attempted to respond to the community's complaints by developing a series of ordinances designed to regulate the noise of operations at the Airport in an effort to make the Airport and the community compatible with each other. Each of these ordinances has, at the same time, the effect of recognizing that as quieter aircraft were introduced, it would be possible to have more operations. The City Council believes it has drawn the balance of decreasing noise and increasing air carrier operations as carefully as it could be done in what is admittedly an unscientific process. Needless to say, the air carriers have not agreed, and the City and the airlines have been constantly in litigation over the City's noise regulations since 1983.

In 1988, a U. S. District Judge held the City's then current noise regulations to be unconstitutional on the basis that they violated the Equal Protection Clause and unduly burdened interstate commerce. That decision is now on appeal. The matter will be reargued next month.

The City has also done a Part 150 Study under the auspices of the Federal Aviation Administration. That Study, based on technical analysis and community participation, proposed a series of noise mitigation measures which were later embodied into the regulations which were litigated in 1988. The City's proposed regulations in the Part 150 Study were without exception disapproved by the Federal Aviation Administration, demanding scientific certainty and other elements of review which far exceed what a court would require, making approval impossible.

During this same period, the cumulative noise measured in CNEL (the substantial equivalent of the LDN standard used by FAA), has decreased from a very large 65 CNEL contour with a 70 CNEL contour affecting the residential community in 1979 to the present situation where almost no property is affected by 65 CNEL. Most of this reduction in noise is a result of replacing Stage 1 and 2 aircraft with Stage 3 aircraft which would not have occurred without the City's regulations.

In the context of this experience, the City of Long Beach believes that it has a unique background upon which to comment upon the issues raised by the Committee. Those issues will be addressed one at a time in this memorandum.

I. Federal Noise Emissions Standards

Based on the experience of the City of Long Beach in operation of its Airport, and what we understand to be the experience at neighboring airports in Burbank and Orange County, California, it seems clear that there are siginificant benefits to be derived from eliminating Stage 2 aircraft at any given airport and replacing them with Stage 3. These benefits are measurable both in terms of noise reduction and increased capacity. As an example of the noise reduction which can be achieved by conversion from Stage 2 to Stage 3 aircraft in the air carrier fleet, while increasing the passenger carrying capacity within any given amount of noise, the Long Beach experience is instructive.

In 1979, there were approximately ten daily scheduled air carrier flights. These were all conducted by Stage 1 and Stage 2 aircraft. In addition, there were some charter operations and McDonnell Douglas manufacturing operations, all of which were Stage 1 or Stage 2. The cumulative noise impact area of the Airport was such that the 70 CNEL contour extended a short distance into the surrounding residential community. The 65 CNEL contour extended much further. Today, there are forty-one scheduled air carrier flights each day in addition to a small number of charter operations and McDonnell Douglas manufacturing operations. All of these operations are conducted by Stage 3 aircraft. Notwithstanding this much greater level of air carrier operations, the cumulative noise impact of airport operations is

such that today the 65 CNEL contour extends only a small distance into the surrounding residential community and the 70 CNEL contour is entirely within the airport boundary. Long Beach could not benefit from a Stage 2 phase-out since the fleet at Long Beach Airport is already all Stage 3.

Similar experiences have occurred at Orange County John Wayne Airport, where the number of air carrier flights was forty one in 1982 and is expected to be over 100 per day within a few months following the opening of their terminal. At the same time, the Orange County 65 CNEL contour has shrunk noticeably.

In a similar time period, Burbank-Glendale-Pasadena Airport has reduced its 65 CNEL noise contour by more than fifty percent, while more than doubling the number of daily air carrier flights and the number of passengers carried.

These facts, while anechdotal in nature, do indicate the kinds of benefits which can be derived from Stage 2 to Stage 3 aircraft operations.

In the "Report to Congress, Status of the U. S. Stage 2 Commercial Aircraft Fleet", prepared by the Federal Aviation Administration in August 1989, there is a lengthy discussion of the costs and benefits of a national Stage 2 operating ban. The City of Long Beach is not aware of any intervening analysis which is more thorough and detailed than the report to Congress.

Testimony in the case of Lockatt v. City of Long Beach, the first of the homeowners cases which was tried last year

in 1989, contains graphs which clearly support the antidotal description of the Long Beach experience and which were in no small part, persuasive to the Court in its decision that there were no noise damages. (Attachments 1 and 2).

II. Rights of Local Airport Proprietors to Restrict Operations to Limit Noise

The Committee has asked respondents to address the need for changes in standards or procedures which govern the rights of state or local governments (including airport authorities) to restrict aircraft operations to limit noise.

The right of local airport proprietors to restrict operations for the purpose of limiting noise is firmly established in the case law and in legislative history and comments by members of Congress and in material prepared by the Executive Branch, including the Federal Aviation Administration and Department of Transportation. This right is based on two factors: (1) The fact that airport proprietors are the ones who must pay the damages if there is excessive noise; and (2) the airport proprietor is closer to the community and can better respond to its needs than to any other level of government. This is reflected in a substantial body of case law.

In Santa Monica Airport Assoc. v. City of Santa Monica, 659 F.2d. 100 (1981) the 9th Circuit affirmed a trial court decision upholding against challenges based on federal preemption, interference with interstate commerce and denial of

equal protection, four out of five municipal ordinances regulating aircraft noise. The pattern of regulations in that case and the legal issues raised are substantially similar to those in this case.

The regulations affirmed by the Santa Monica court included a single event noise limit (SENEL), a night curfew and strict limitations on general aviation training and helicopter training. The Santa Monica regulation which was not upheld was a ban on jets, which would otherwise have been regulated by the single event limit.

In its preemption analysis, the 9th Circuit reviewed the Supreme Court decision in City of Burbank v. Lockheed Air Terminal, and noted that the Supreme Court, "... expressly left open the question of 'what limits, if any, apply to a municipality as a proprietor...' should it decide to enact similar ordinances ...". The caveat may have been thought necessary in view of the Court's earlier decision in Griggs v. Allegheny County, 369 U.S. 84 (1962) which held municipal airport owners liable for 5th Amendment takings of private property resulting from unreasonable airport use with respect to its neighbors. Municipal airport owners needed some means of limiting their liability under Griggs. Environmental quality control ordinances by municipal air-port operators are among those means.

The Supreme Court in Burbank instructed us to start with the assumption that the historic police powers of the state were not to be superseded by the federal act

unless that was the clear and manifest purpose of Congress. In light of Griggs, Congress did not preempt a municipal airport proprietor's right to enact noise ordinances. Because Congressional intent not to have preempted all regulations by municipal proprietors is clear, the Court concluded that these ordinance were not preempted.

A substantial amount of the legislative history indicates that Congress intended that municipal airport proprietors enact reasonable regulations to establish acceptable noise levels for airfields and their environs. The legisla-tive history does not suggest that Congress intended only to a allow municipalities the option of excluding certain classes of aircraft. The reasonable inference is that Con-gress intended to allow a municipality flexibility in fashioning its noise regulations.

In another key case, British Airways Board v. Port Authority of New York and New Jersey, (Concorde I) 558 F.2d 75 (2d Cir.1977) the first of two cases with the same name relating to the introduction of the Concorde at New York, the Court recognized a two-tiered regulatory scheme of aircraft noise control involving both the federal government and local airport proprietors. It held that the regulations adopted under this scheme were not preempted and did not violate the Commerce Clause so long as they were reasonably related to the objective of control of noise.

The Court noted that the regulation of excessive aircraft noise has traditionally been a cooperative enterprise

in which both federal authorities and local airport proprietors play an important part.

> "The task of protecting the local population from airport noise has, accordingly, fallen to the agency usually of local government charged with operating the airport. ... Indeed, since the operator controls the location of the facility, acquires the property, and air easements and is often able to assure compatible land use, he is liable for compensable takings by low flying aircraft. ... The right of the proprietor to limit his liability by restricting the use of his airport has been thought a corollary of this principle. It is perhaps more important, however, that the inherently local aspect of noise control can be most effectively left to the operator as the unitary local authority who controls airport access." 558 F.2d 83-85

Congress repeatedly has declined to alter this cooperative scheme.

Under the Commerce Clause, Congress has the power in order to promote nationwide transportation system and to control interstate and foreign air traffic flow, to dictate what aircraft should be permitted to land and take off from airports, but it is manifest from our scheme of aviation management that Congress has consciously committed to airport owners the responsibility of determining permissible levels of noise for the facility and its environment.

Congress has, by giving explicit sanction to this pattern of regulations, implicitly denied the executive power to preempt operator imposed noise restrictions regardless of the statutory source invoked to support federal administrative action.

The proper domain of the operator is the issuance of regulations or establishment of requirements as to the permissible level of noise which can be created by aircraft using the airport.

Congress reserved to proprietors the authority to enact reasonable noise regulations as an exercise of ownership rights in the airport, because they are in a better position to assure the public weal than any other entity. The Concorde Court held that a single event noise limit did not interfere with interstate commerce and was not preempted.

The Santa Monica Court noted that noise ordinances must be regarded as a economic regulation. They do not in- volve any suspect classification or regulation or control of fundamental rights. 481, F.Supp.927, 935.

The Supreme Court has held that to validate economic regulations, it is required only that the regulation, and the classification established thereby, be found to be rationally related to a legitimate state interest.

In such a case, an inquiry as to whether there is a preferable, easier or better method to accomplish the legislative goal is irrelevant. For equal protection purposes,

the city or state is not required to use the most modern or easiest or best method of accomplishing its purpose. 481 F.Supp., at 936.

On this basis, strongly supported by other Supreme Court decisions, the Santa Monica court affirmed this single event noise limit, curfew and general aviation regulations reviewed in that case.

In New Orleans v. Dukes, 427 U.S.297, the Supreme Court noted that when local or economic regulation is challenged solely as violating the Equal Protection Clause, the Court would defer to legislative determinations as to the desirability of particular statutory discriminations. Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions, such as race, religion, or alienage, its constitutionality is presumed and requires only that the classifications challenged be rationally related to a legitimate state interest. Rational distinctions may be made with substantially less than mathematical exactitude.

As the Dukes court said, the judiciary may not sit as a super legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights or proceed along suspect lines. ... in the economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the 14th Amendment.

In Minnesota v. Clover Leaf Creamery, 449 U.S. 456, the Supreme Court held that states are not required to convince the courts of the correctness of their legislative judgments. Instead, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is based could not reasonably be conceived to be true by the governmental decision maker.

Although parties challenging legislation under the Equal Protection Clause, may introduce evidence supporting their claim that it is irrational, they cannot prevail so long as it is evident from all the considerations presented to (the Legislature), and those of which we may take judicial notice, that the question is at least debatable.

The Commerce Clause Analysis, applicable to the noise regulations as described by the Santa Monica court is that Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the asserted local benefits.

If a legitimate local purpose is found, then the question becomes one of degree. The extent of the burden that will be tolerated will depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court's opinion in South Carolina Hwy. Dept. v. Barnwell Bros. noted a list of peculiar local

concerns and regulations of harbors, piers and docks, quarantine regulations and game laws. Local safety also seemed to have brought within the ambit of particular local concern in Brotherhood of Locomotive Fireman and Engineman v. Chicago Rock Island, etc., 393 U.S. 129 (1968). Construction Industry Assoc. of Sonoma County v. City of Petaluma, seems to bring environmental concern into that concept of peculiar local concern.

In City Council v. Taxpayers for Vincent, 80 L.Ed. 2d. 772, the Supreme Court upheld a sign regulation affecting first amendment rights on the basis of substantial local interests, noting "the character of the environment affects the quality of life and the value of property in both residential and commercial areas."

It has been argued that the effect on commerce is not to be determined by the effect at one airport, but by the possibility of what might happen at other airports in Southern California and around the country, and a Court must weigh that entire possible course of action on it against interstate commerce. "To take the domino approach would make every airport operator the prisoner of every other airport operator, even if he is the first to initiate a given type of regulation", the Santa Monica case trial court said, rejecting the argument.

In Reeves, Inc. v. Stake, the Supreme Court reviewed a case in which the District Court concluded, "... that the State had 'simply acted in a proprietary capacity'" as per-

mitted by Hughes v. Alexandria Scrap ...,". The Supreme Court noted that a number of cases, including Hughes v. Alexandria Scrap, and others reasoned that "state proprietary functions" are exempt from Commerce Clause scrutiny. The Commerce Clause was directed as a historical matter, only at regulatory and taxing actions taken by states in their sovereign capacity.

The Court noted that state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, states should share existing freedoms from federal constraints, including the inherent limitations of the Commerce Clause. Airport operators enact noise regulations as proprietors

In regard to the need for justification of actions intended to protect the environment, the Alexandria Scrap court said: We do not believe the Commerce Clause was intended to require independent justification for such action.

In its decision in Kassel v. Consolidated Freightways, 450 U.S. 662 (1981) the Supreme Court analysed both the balancing test and the degree of deference to be given to local regulations to be reviewed under the Commerce Clause and stated at 459 U.S. 669-670:

> "The Commerce Clause does not, of course, invalidate all state restrictions on commerce. It has long been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power

in the State to make laws governing matters of local concern which nevertheless affect interstate commerce or even, to some extent, regulate it. ... The extent of permissible state regulation is not always easy to measure. It may be said with confidence, however, that a state's power to regulate commerce is never greater than in matters traditionally of local concern."

"Indeed, 'if ... justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce.' Those who would challenge such bonafide ... regulations must overcome a 'strong presumption of validity'".

"This weighing by the Court requires, and indeed the constitutionally of the State regulation depends on a sensitive consideration of the weight and nature of the State regulatory concern in light of the extent of the burden imposed on the course of interstate commerce."

"In the absence of congressional action to set uniform standards, some burdens associated with State ... regulations must be tolerated."

The 9th Circuit in Burlington Northern Railroad Co. v. Dept. of Public Service Regulation, 726 F.2d 1106 (1985), held:

> "The standard of judging the constitutionality of a statute ... which regulates economic activity, is the same under the due process, equal protection or commerce clauses. Legislation will be upheld if it bears a rational relationship to a legitimate state interest." 726 F.2d at 1109.

The standard of review outlined by Burlington is that only rationality, not perfection is required. A court will not weigh evidence to determine whether the regulation is sound or appropriate; nor will it pass judgment on its wisdom. Questions of economic policy are appropriate issues for the political arena which spill over into the judiciary only when they implicate constitutional rights. Those challenging regulations must show that the 'legislative facts' on which the statute is based could not reasonably be conceived by the legislature to be true.

Actions by local airport proprietors to restrict aircraft operations are presently reviewable under the Equal Protection Clause, the Due Process Clause and the Commerce Clause of the United States Constitution. These provisions of the U. S. Constitution provide substantial protection for the national interest and yet provide a fair test which also protects the interest of the local airport proprietor. So long as the current thinking of the U. S. Supreme Court in interpreting these three provisions is followed, there is no need for a new standard. If, however, the federal government wishes to review local noise control rules under a

different standard or a different reading of these constitutional provisions than what is supplied by the United States Supreme Court, or if Congress enacts regulations affecting the review of these regulations, then it is clear that a new standard needs to be established and that standard needs to explicitly state that airport operators are permitted to establish restrictions including single event noise limits at their airport which limit their liability and which reduce cumulative noise to a level of 65 CNEL or 65 LDN.

III. Standards for Lawsuits by Persons Adversely Affected by Airport Noise

For most of the decade of the decades of the 1970's and 1980's following the Supreme Court decision in Griggs v. Allegheny County in 1962, the trend of case law in all of the courts in the country, was to establish and expand bases upon which airport operators could be held liable for taking or damaging of property due to aircraft overflights. Nowhere was this expansion greater or clearer than in California. The three decisions in California which are probably the most significant in expanding airport liability were Aaron v. City of Los Angeles, 40 Cal.App.3d 471, 115 Cal.Rptr. (1974); Greater Westchester Homeowners Assoc v. Los Angeles, 26 Cal. 3d. 86, 160 Cal.Rptr.733 (1979) and Baker v. Burbank-Glendale-Pasadena Airport Authority 39 Cal.3d 862, 328 Cal.Rptr. 293 (1985), (hereinafter Baker I).

In those cases, the Courts concluded that not only were airport proprietors responsible for inverse condemnation under the theory that the noise from aircraft operations took or damaged the property of neighboring residents by reducing its value, the Courts also determined that airports were liable for nuisance damages which could include interference with the quality of life, creating harmful or offensive conditions, and even personal-injury type damages.

Finally, the first Baker case in the California Supreme Court determined that airports were continuing, rather than permanent nuisances. What this has meant is that rather than being sued in one lawsuit where all damages for all times would be determined, an airport could be subject to multiple lawsuits because as long as the airport operated, a new injury was created each day. Thus, San Francisco Airport was subjected to tremendous volumes of small claims actions for nuisance. This harassed airports, creating a state of uncertainty as to their financial condition and considerable legal expense.

More recently, the courts in California, continuing their trend of leading the nation in this area, have clarified the law as to what constitutes liability by airport proprietors and under that circumstance.

The two most important decisions here are Institoris v. City of Los Angeles, 210 Cal.App.3d 10 (1989) and the Court of Appeals decision from this year in Baker v. Burbank-Glendale-Pasadena Airport Authority 220 Cal.App.3d 1602

(1990) (hereinafter Baker II). These cases made clear that there is a statute of limitations for inverse condemnations actions. It is five years. They made clear that where operations and noise levels have stabilized for a period of five years, an airport operator may acquire a prescriptive easement (avigation easement) over the property, permitting it to make noise at all levels less than the stabilized noise level. The courts also have found that the nuisance damages are only available for the 100 days prior to trial.

Finally, and perhaps most important, the Baker court found that liability for excessive noise damages exists at noise levels above 65 CNEL and does not exist at noise levels below 65 CNEL. Now for the first time as a result of this decision, there is a predictable and identifiable standard for liability, and there is a noise standard against which airport operators can plan. This should have the substantial effect of stabilizing aircraft noise litigation in California.

If there were to be a national standard, it should follow the pattern in the Baker and Institoris cases. A statute of limitations for inverse condemnation damages should be specified. The right of airport operators to acquire prescriptive easements should be specified. The time limits, if any, in which nuisance damages would be applicable should be specified. The regulation should specify which nuisances are continuing or permanent. It is suggested that the California rule of continuing nuisance flies in the face

of all previously existing law and that the appropriate standard is that airports are permanent nuisances.

Finally, a standard for liability should be established, such as 65 CNEL or 65 LDN. In addition to this, it may be appropriate to specify that even if a prescriptive avigation easement has been acquired at some point in time, increases in cumulative noise of 1.5 decibels would result in renewed liability. This is consistent with a new California statute.

IV. Economic Costs and Benefits of Alternative Approaches

The Committee has asked for comments on the economic costs and benefits of alternatives for dealing with Issues 1 through 3 including effects on airport capacity of both individual airports and the national systems, effects on airline competition, effects on the costs of air transportation, and the effects on the environment.

Even a cursory analysis of the three issues which the Committee has asked respondents to address will indicate that any action the Congress might take on any of the three will have costs and benefits, both to the environment and to the economy. Each such action may also affect airport capacity, airline competition and the cost of air transportation.

Elimination of Stage 2 aircraft will clearly have economic costs to the aviation industry by requiring a more rapid acquisition of new aircraft with the attendant capital expense. This will also cause elimination of some of the oldest and

therefore, least costly, aircraft from the fleet. This may increase the cost of air transportation and therefore have an economic effect by making it more difficult for some carriers to operate or operate at low cost. At the same time, elimination of Stage 2 aircraft will have potential benefits for airport capacity, at least to the extent that capacity is constrained by noise. This is true because, as has been seen in the cases of Long Beach, Burbank and Orange County, significant increases in air carrier operations can occur hand-in-hand with significant decreases in noise upon the conversion from a predominately Stage 2 to an entirely Stage 3 fleet. This increase in airport capacity is accompanied by the environmental benefit of reducing noise. This in turn has an economic benefit in the sense that it avoids reduction in property values which might otherwise occur and result in attendant litigation to recover the economic costs imposed on neighboring residents where their properties are diminished in value as a result of aircraft overflights.

It might also be noted that Stage 3 aircraft are more fuel efficient than Stage 2 aircraft of comparable sizes and engine configurations. As a consequence, there will be signi-ficant environmental and economic savings from a conversion to Stage 3 aircraft by reducing the amount of fuel used. This may counterbalance some of the acquisition costs of the newer air-craft. There will also be environmental benefits from the reduced fuel use since less fuel burned results in less emissions which with their potential air quality implications

The best analysis of these issues is contained in the report to Congress, "Status of the U. S. Stage 2 Commercial Aircraft Fleet" prepared by the FAA in August 1989. In addition, the noise working group of the Task Force on System Capacity did some work on this subject.

In regard to the regulations imposed on aircraft operations for noise purposes by local airport proprietors, it is clear that what the least cost option is depends on one's point of view. It is clear that any regulation will impose some increased cost and reduced efficiency on some airlines and consequently, on the total capacity of the system to operate efficiently. This may in turn affect the cost of air transportation. At the same time, any effective regulation will have a beneficial effect on the environment. In addition, local operational restrictions which reduce noise will have economic benefits in the sense of avoiding reduction of the value of surrounding properties and avoiding the concomitant litigation.

While there is no comprehensive national study which discloses what exactly the economic costs of noise to residents in communities surrounding airports might be, the experience of the City of Long Beach provides a hint. Testimony in the recent case of Lockett v. City of Long Beach which was won by the City, indicates that the residents and their appraisers in that case, viewed the diminution of value to their properties as being on the average in the range of $20,000 to $30,000 per property. The Lockett case represented approximately 200 properties. The City has over 700 cases

outstanding left to be resolved. While the Plaintiffs did not prevail in Lockett, potential economic costs of such litigation are substantial. Each of the plaintiffs, both in Lockett and in the unlitigated cases has asked for damages of $100,000 per property. On the basis of 900 properties, this represents a value of approximately $90 million. Assuming a $20,000 cost per property (consistent with the Lockett the plaintiffs' testimony), the potential cost of loss of all of these cases by the City would have been in the vicinity of $18 million.

This is not by any means a scientific study, and of course, the City did not lose in Lockett and the other cases remain unlitigated, but it is an indication of the magnitude of the economic cost of noise, at least in the opinion of some individuals. Absent some scientific national study of this issue, this can serve at least as an empirical indication that are substantial economic costs related to noise which would be avoided by regulations reducing it.

If rules were adopted which prohibited recovery of reduction in property values where this is caused by aircraft overflights, that action would eliminate the direct economic burden on airport operations and the indirect burden on individual airport and system capacity which such potential noise damages impose. It might, at the same time, have a broader economic cost, however. If residents were unable to recover damages for the reduction in value of their property, properties could potentially be abandoned and result in urban

blight and all of the ancillary problems which that portends. This, of course, has a much larger economic impact. There is no specific study which indicates that such occurrence is necessarily likely, but it is a sufficient possibility to be considered.

The current status of airport liability, airport right to impose noise regulations and ability of aggrieved parties to litigate both for noise damages and to challenge noise restrictions, is reasonably balanced. There is a cost to airports for aircraft noise litigation. There is a cost to airport neighbors in terms of their annoyance and reduction in property values. This is reimbursed by the airports. There is a cost to airlines to meet the noise rules and to reimburse the airports for their economic costs in meeting the liability burden through the rates and fees charged by the airports. This system imposes a rough balance, but no party in the system is able to make an economic choice which will affect their costs.

Perhaps the fairest balance would be to have all of the costs, both the homeowner costs for reduction of property value due to noise from overflights, and their own costs in terms of reducing noise imposed directly on the airlines. Then they could make an informed choice as to the cost or benefit of any particular course of action. The same would be true if both costs were imposed on the federal government. Either way, there would be an unitary party with the ability to make those choices. At present, the airports which have

the liability, have relatively little control over the noise, although they may enact some regulations which control it to some degree. It is, however, the airlines which create the noise for which the airport must pay. The best airports can do is do those things which force the airlines to make choices which indirectly access these costs.

IV. Procedures or Standards for Federal Regulation of Airspace

It appears that this issue has chiefly to do with such matters as the East Coast Plan. The City of Long Beach has no specific comment on this issue. The City of Long Beach does make the following observation: Change in traffic patterns which results in increased noise or in noise being heard in places where it has not been heard before will result in new or greater intensity of complaints and community reaction.

Thus, while one neighborhood might argue that it would be happy if the planes flew somewhere else because it would be quiet, a new neighborhood that planes might fly over would be unhappy because it had planes flying over it where it didn't before. The same unhappiness would occur where one level of noise had historically existed, but was significantly increased.

V. Federal Assistance for Noise Abatement Planning and Programs.

The City of Long Beach makes the following comments in regard to land use planning around airports:

(1) Where a new airport is being developed or where an already developed airport exists in an area which is some distance from residential development, land use planning can be a significant benefit in terms of avoiding liability and therefore permitting the airport to maximize its operational capacity. This also has the parallel benefit of avoiding the need for regulations with their indirect costs.

(2) Land use planning is also useful where properties surrounding the airport even though they may be residential, are of either very low values or are scheduled for redevelopment.

(3) Land use planning is not much help where, as is the case in Long Beach and Orange County, and Burbank, the airport itself is surrounded by residences. In such stable communities, there is no practical land use application which can be used to avoid the costs of aircraft noise by means of planning. There are some tools which have been proposed - one is the acquisition of aviation easements. This simply involves a voluntary payment to be allowed to make noise, instead of an involuntary payment for noise damages. This has the same economic cost to the airport and results in roughly the same financial risk. It has the effect of shifting the burden of the noise from the airport to the resident.

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Another approach is sound attenuation. This has been found to be very effective in some communities, particularly where accompanied by air conditioning. A study conducted by Bolt, Baranek and Newman in Atlanta, however, found that the perception of noise among residents whose properties had been treated for sound attenuation some years prior to the study, did not differ significantly from that of residents subjected to substantially the same amount of noise whose properties had not been treated. Thus, there is at least room to question whether sound attenuation is really a useful method of avoiding the aircraft noise problem. It certainly only benefits the property owner while he is inside. It does nothing outside. It continues to impose an economic cost on either the airport operator or the federal government to pay for such sound attenuation. Costs imposed on the federal government are of course, borne by the entire aviation system.

VI. Conclusion

There is no cost-free way of balancing the needs of the air transportation system and the people who live near airports and are annoyed or burdened by the noise from aircraft operations. The best one can hope to do is arrive at a reasonably fair balance between the various costs. It does not appear likely that there is any set of circumstances i

in terms of a national policy which would result in a dramatically better balance of the economic costs to individuals in the system than the present set of circumstances.

It is clear, in any event, that absent some major change in the law, the points of view of airlines who want no restrictions imposed on them at all, airports who want to avoid expenditures for noise damages or noise reductions and neighboring residents who want no noise, are irreconcilable.

TESTIMONY OF
WAYNE COUNTY EXECUTIVE
EDWARD H. McNAMARA
TO THE
PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
REGARDING A FEDERAL AVIATION NOISE POLICY

SUBMITTED BY:

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INTRODUCTION

Mr. Chairman, Members of the Aviation Subcommittee, I am Wayne County Executive Ed McNamara, and I represent over 2 million people in the Metropolitan Detroit area.

I am delighted to be here in front of this prestigious committee on a subject that is so timely and is of such national importance, but more importantly because it so greatly affects the quality of lives of the people of Wayne County who I was elected to protect and serve. We are on the cutting edge of noise as a problem, but also on how to responsibly resolve those problems.

I know this committee has broad concerns regarding Federal Aviation noise policy, but I intend to focus mostly on one issue which this committee indicated is of particular concern and that is the need for changes in procedures or standards for federal regulation of airspace (including the pattern of operations for the air traffic control system) in order to take better account of environmental effects of airspace changes. Rest assured, however, that I will incorporate my concerns on many of the other issues of particular interest to this committee.

As you know, airplane noise is a complicated and controversial issue. This is especially true in Wayne County. We were transformed from an airport which was working diligently over the last few years with strong public support on some manageable noise problems to an airport

with noise problems so serious that our future will now depend on a referendum vote this November. The FAA changed our flight tracks and departure and arrival profiles. They explain that they worked internally for 2-1/2 years prior to making the change, and that it was designed to dramatically improve a very unsafe airspace and reduce workload on a chronically understaffed operation. Everyone is for safer airspace and I truly believe the changes have helped in that regard.

Unfortunately, this change occurred just one month after we completed a 2 year noise study which cost hundreds of thousands of dollars and involved hours and hours of labor by community leaders.

Although the FAA was involved in our noise study, we were not cognizant of any changes in airspace under 5,000 feet that would create any significant noise impact.

That was just 10 months ago. And although we are still suffering the effects of noise, we have hope. There's hope because we, ourselves,... Wayne County,...as an airport operator decided to use every technical, legal and political resource available to combat the noise. As a result, we are now involved in an unprecedented process with the FAA to solve the problem. It would be unfair for me to criticize the FAA without telling you the rest-of-the-story. My optimism may be premature because we haven't quite put our hands on the antidote to the noise potion, but we expect to have it by December of this year. I'm

here to tell you something that few people believe about the FAA. The FAA does care about noise when you make them care. Metro Airport is living proof of that. But you have to be well prepared and ready to work with them.

Before going any further, I want you to know the FAA has been responsive since last March. Late in the spring they instituted a full time preferential south flow for departing aircraft which means aircraft depart over densely populated areas north of the airport only approximately 30% of the time. This have been very helpful but we still need relief on the northern departures.

I want to explain today how we could have avoided this whole mess. I'll suggest a better way to address the FAA's safety and traffic needs without trading our environment or jeopardizing billions of dollars of economic growth in economically disadvantaged areas.

Prior to this though, I think it would be helpful to give you a brief background about Wayne County - Detroit Metropolitan Airport.

Metro Airport has survived 50 years through various forms of abuse, neglect, incompetence, mergers, airline deregulation and even a hostile takeover of its hub carrier to find itself at the point of finally stepping towards fulfilling its destiny as one of the most significant economic generators in one of the most economically volatile and sluggish areas of the nation, only to have all of its progress and promise

potentially wasted.

Just so you can truly appreciate just how much effort its taken to poise Wayne County Metropolitan Airport for its future, let me give you a very brief synopsis of our recent history.

RECENT HISTORY

Wayne County Airport first handled commercial carrier service over 50 years ago in 1939. We know this because we just found the last piece of luggage lost on that flight.

The 1940's saw Metro Airport operate as a U.S. Army base for bombers going to Europe. As a result some hangars and runways were built.

In the late 50's Wayne County's first serious investment in the amount of $10.4 million started construction of the existing main terminal, one 10,500 foot runway, a hotel and a restaurant.

The 60's and early 70's were marked by tremendous economic growth for the Detroit area but for a variety of reasons actual airport development fell behind.

There was steady growth, but it was slow. The County was partly to blame. The airport was operated by an unaccountable political body that didn't have the foresight to invest in airport growth. Finally in 1982 Wayne County voters adopted a new charter changing its government into a strong executive form.

In 1984, Republic Airline designated Metro Airport as a hub and for the first time the airport's future seemed secure. But of course, things are rarely what they seem. We held our breath throughout 1986 as Northwest merged with Republic causing tremendous uncertainty as to Metro's future, but we breathed a collective sigh of relief as Northwest ratified its commitment to Wayne County. With this, we started down the long road of updating our Master Plan and performing a Part 150 Noise Study.

Our hopes were raised by a 1986 FAA Capacity Enhancement Task Force report which explained that Metro's status as a pacing airport required that capacity be enhanced to promote safety and prevent delays.

But once again our hopes were chilled by fears as Northwest became the target of hostile takeovers which threatened to bankrupt the company, bleeding it of the capital necessary to commit to expansion. Through a combination of good luck and hardball negotiations we ended up with a better Northwest Airlines under enlightened ownership.

Modernization was back on track; so in 1989 we started the design process for a new $1 billion terminal and completed our Master Plan at a cost of $1 million. We also completed our environmental Impact Statement and the Part 150 Noise Abatement Plan in October 1989. We were very encouraged about the future. For the first time in 50 years we had a combination of stable government and airlines all poised

for growth with strong public support. In fact, as part of our usual polling we polled Wayne County voters in October 1989 and over 65% supported expansion. Of those polled, 43% felt the single biggest problem facing the airport was parking availability. Only 2% of the respondents felt airport noise was a problem. But all of this was about to change.

D-DAY

D-Day. November 16, 1989. That's the day the FAA changed flight tracks and profiles for all aircraft operating at Metro Airport. Since the changes occurred in the dead of winter when windows were closed the noise impact was noticeable only by a few people, primarily in the densely populated residential areas north of the airport, particularly in Dearborn, Michigan. By the way, you should be aware that Dearborn, Michigan is represented in Congress by the Honorable John D. Dingell. The airport itself is in the district of the Honorable William D. Ford. Both have been strong advocates of modernizing Metro Airport.

Things only got worse as time went on. The Memorial Day Weekend was really the first time people were at home for extended periods of time with their windows open. Because of the winds, the planes departed in a northerly flow from Friday through Monday of that weekend. People with charged emotions became ballistic. This was new to them. And it was happening over some of the most affluent and

historic neighborhoods in Wayne County.

PRE D-DAY

Prior to the November 16, 1989 change, aircraft departing to the north from Metro would climb to 1,000 ft, take a hard turn to align themselves over a major freeway, and then slowly climb to 3,000 ft. Once they got over the Rouge Industrial Complex or Detroit River to the east, or rural farm land to the west they would then thrust up to the appropriate cruising altitude. There would be occasional deviations, but for the most part aircraft would be over rural or industrial non-noise sensitive areas. Although we had some problems along the freeway, they were manageable.

Under the new scheme, pilots take their foot off the brake, put the engine in full thrust and keep thrusting straight out until they reach 10-15,000 feet. The whole time the engines are pointed down at homes in some of our most affluent and densely populated neighborhoods. No longer do aircraft follow industrial or open non-residential flight tracks.

NEW NOISE

The consequences of this action have been as you could expect. Citizen outrage against the airport flourished as far as 12 miles from the airport. A recent poll confirms this. Whereas one year ago only 2% of Wayne County residents felt noise was the most important problem at the airport, that has now multiplied by 10 to nearly 20%. And instead

of 65% of all Wayne County residents supporting airport modernization, we've lost 20 points with only 45% of all residents favoring modernization today. People want to behead the goose that lays the golden egg because its of its honk instead of just fixing its honk.

The sole cause for this drop in support for the airport was the noise created by this change. There has been no appreciable increase in the number of flights since last year. The only things which have changed are the flight tracks and profiles. We were put in a corner. I did the only thing I knew how ..... and that is fight back on every front.

I decided that Wayne County would no longer be defensive about noise problems but that as an airport operator we must be proactive about mitigating noise. I decided to use every resource at our disposal. I named one of my top staff members, a non-airport person, as "Noise Czar" and gave him Carte Blanche. He immediately assembled a team of leading legal, technical and air traffic experts from across the nation to get facts and assess our options. They set upon two courses of action:

First, review and recommend everything we could do as an operator to reduce aircraft noise, including activity use restrictions like a local Stage II phaseout and non-addition rule, night noise restrictions, etc., I'll explain this in more detail a little later.

The second course had to include some relief from the FAA. When

my Noise Czar first met with the FAA we were skaptical about our chances. After a series of meetings, Regional officials finally acknowledged that changes could be made but that it would take up to 2 years to study it. We knew we didn't have two years and after extensive and very delicate communication, to their credit, the FAA began to realize that. Little did we know, though, that time was running out.

We were working hard, but so were the residents of Dearborn who were impacted by noise from the FAA change. They organized a group called Citizens Against Aircraft Noise and started and completed a 21,000 signature petition drive pursuant to a little known wrinkle in Michigan Bond law to seek a referendum on a $100 million bond issue. These bonds don't involve one tax dollar. They are airport revenue bonds which are paid by the airlines, they are only issued under the name of the County to make them more attractive as tax free bonds. The money is to be spent on a parking structure, storm water management control devices, design and property purchase for a 4th runway, and noise berms and noise monitoring equipment.

We are seven weeks away from that election and we're working hard on the noise problem. Just 10 days ago the FAA took an unprecedented step and announced its willingness to set up a working group to review last year's changes for possible revisions to reduce noise.

It's unprecedented in that it's like a SWAT team. It consists of 4 FAA air traffic control experts, the National Director of Flight Support Services for Northwest Airlines and Wayne County's Noise Czar from my office. Furthermore, they are moving fast in that they met for 2 days last week and will meet regularly to finish no later than December 1, 1990 with recommendations to mitigate noise. They are approaching the problem with no predisposition or prejudices and all options are being studied. The FAA hasn't done this anywhere in the nation and we appreciate and applaud their willingness to subject themselves to this process.

If this approach works, every other noise impacted airport will seek this SWAT team approach. Until now, these reviews have taken at least 2 years. We're going to do it in 9 weeks. We truly are on the cutting edge of solving noise problems.

NOISE CAP

In addition, we are on the verge of announcing our own noise plan in which we promise to put a CAP on noise from the airport. We are confident that through aggressive management we can guarantee that the noise generated by the airport activity will never be worse than it is today, and in fact will only get immediately better in an incremental and measurable way. This CAP may be achieved through a variable combination of activity use restrictions, predictably involving expedited

Stage II phase-out, Stage II non-addition, restrictions on engine run-up as well as other measures. Although these actions may anger the Airlines, Department of Transportation or the FAA, we believe we have no choice but to protect ourselves. There are two very clear reasons why we feel this way:

First, the unbridled ability of the FAA to inflict airspace changes that are so injurious to the quality of life of our citizens and ultimately the economic vitality of the region represents such an unfair imbalance of power that results in a "battle-stations" - mentality-induced-paralysis leaving our communities facing the double jeopardy of unbearable noise and a strangled economy. Our noise plan will hopefully prevent such consequences.

The second reason that Wayne County has to devise its own noise plan is plain and simple -- The Federal government hasn't. The lack of an acceptable national strategy on noise addressing issues such as Stage II phaseout or non-addition, night-time restrictions, or even procedures regulating air traffic control changes so as to include those who will have to live with the consequences <u>before</u> suffering them leaves every airport operator to fend for themselves.

A BETTER WAY

There is a better way. I urge this committee to move towards a national policy which, at a minimum, must do the following things:

First, regulate the FAA to prevent changes in air traffic control under an altitude of 10,000 ft. without appropriate environmental assessments.

Second, the FAA must commit to strategically plan and maintain flight tracks for the long term to allow communities to effectively plan land uses consistent with air traffic.

Next, Congress has to legislate an expedited Stage II phase out/non-addition rule with incentive for Airlines which already teeter too closely towards economic failure.

Then, there should be limited federal preemption on certain activity use restriction involving Stage II phase out and non-addition and some other areas to prevent airport operators from seeking unfair compatitive edges at the expense of airports in noise sensitive areas.

I think everyone recognizes that Congress has to be careful when attempting to more closely manage the FAA's abiiity to make air traffic control changes. Air traffic control requires tremendous expertise and coordination. And the FAA must have some flexibility to adjust for changes in traffic volume, technological advances, and even staffing levels. As members of this committee you know the entire airline industry is an elastic industry, constantly changing just to stay alive. The interdependence between the FAA, airlines, airport operators and noise impacted communities is very strong. Our interests are so

inextricably linked that it is really in the interest of everyone involved to seek cooperative solutions to problems; whether it's noise, or even air traffic delays. Ultimately, if something is so bad for a community that it threatens the operation of an airport, it's not good for the airlines or the FAA either. And vice versa. We're all in this boat, or ... plane together. That's why our SWAT team will work and that's why similar smaller working groups should be used before air traffic changes are made. It wouldn't compromise the FAA's need for flexibility or any other party's ability to function. The stakes are too high to rely on some informal decision by the FAA to use this approach after problems arose at our airport. This kind of approach should be required prospectively, before any changes are made.

I doubt this approach will be perfect because it ultimately depends on the integrity of the people involved. But it would be a lot better than the current scheme.

THE COST OF COMPLACENCY

The lack of a national preemptive noise policy will be very costly to everyone involved in air traffic, and ultimately the taxpayers.

WAYNE COUNTY'S EXPENSES

Our early experience is a good example of this. Wayne County has had to devote nearly half a million dollars of resources just to scramble to recover from their flight pattern change. My administration

has had to divert its attention from other serious issues such as violence prevention, drug control and economic growth just to deal with this issue. Now we are embroiled in an expensive and high stakes referendum that could doom Metro Airport and its economic promise.

We employed a full court press by our powerful congressional delegation and an expensive team of legal and technical experts. And for what?

We have had to devise a noise plan that, in the absence of a national plan, could place us at a competitive disadvantage with other airports at a time when we should be doing everything we can to increase investment in our area. And for what reason?

All of this incredible mobilization of force due to one well intentioned - air-traffic-control change. I'm convinced the FAA's intentions were pure. Its mistake in our case was in its implementation. And we're fixing that thanks to the leadership of the FAA.

OTHERS' COSTS

The system and fiscal cost to airlines, and their passengers, will dramatically increase if we continue without a national noise policy. Airlines will be unable to deal with the mushroom-like growth of local restrictions. Interstate commerce will be choked by the proliferation of local restrictions. Pilots will need manuals for each airport they use. Airlines will not have sufficient equipment to meet needs and less

traveled routes without enough clout to impose their own restrictions will get all the noise.

Moreover, many airports are spending millions just trying to devise local solutions to this national problem. Seattle - Tacoma has been running a 150 member mediation panel for months just to do what we're doing in 9 weeks. And it costs a lot of money. These are dollars that could have been spent on mitigating noise, or enhancing airports. Every major airport is stuck in a similar noise vice and doing whatever it takes to relieve the pressure. We're all spending a lot of dollars on the local symptoms of a national problem. The only real solution will be a national solution.

Wayne County shouldn't have to sacrifice its environment for jobs. And we won't. But economic security is also an important element of the quality of life of Americans and we must do everything we can to ensure. The first step is for the federal government to assume its rightful role in developing and implementing a national noise policy. I wouldn't wish our experience of the last 5 months on anyone. It could have been avoided. This committee can make sure it doesn't happen again elsewhere in the United States.

TESTIMONY TO THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
Subcommittee on Aviation
Glenn M. Anderson, Chairman

Submitted by Paige Miller
Commissioner, Port of Seattle
Seattle-Tacoma International Airport
Seattle, Washington
September 25, 1990

BACKGROUND

Sea-Tac, like many airports, is experiencing intense pressure to balance our need for additional capacity with mitigation of noise problems caused by growing aircraft operations. Although our problems are similar to many other airports, we believe our past and recent history uniquely qualifies us to comment on aircraft noise problems and solutions.

The Port of Seattle has been involved with the airport noise issue since the mid 1970's when we established a program to buy homes that are severely impacted by noise and relocate the residents. We are nearing completion of our acquisition and relocation program, in which nearly 1,400 homes have been purchased at a cost of about $100 million dollars. The Port of Seattle was one of the first airport operators to work with the federal government in successfully implementing a Part 150 noise mitigation study, including a high quality noise insulation and neighborhood preservation program. And we consult with the Federal Aviation Administration (FAA) daily as our noise abatement staff responds to noise complaints through a variety of noise and flight track monitoring programs.

This is a list of accomplishments that would be regarded with pride by any airport. But with the growth of air traffic and the spreading sensitivity to noise from aircraft overflights, we at the Port of Seattle found that we had to do more -- that our Part 150 noise mitigation programs, excellent as they are, were not seen as responsive by the many neighborhoods outside the Part 150 boundaries that nevertheless regard themselves as adversely affected by noise from Sea-Tac. Without a strong noise reduction program that specifically addressed community concerns in the Seattle area, we were jeopardizing continuing community acceptance of our airport and its ability to meet future air travel demands.

The Seattle Port Commission, the Port's elected policy-making body, acted on a citizen advisory committee recommendation and approved use of a formal, consensus-based mediation process to negotiate Sea-Tac's "second generation" of noise programs. Consensus decision-making was a political risk, but a necessary one. The Port went into this unique process as only one of the parties to the negotiations, recognizing that the other parties were acting not as an advisory committee, but as equals in determining what the airport would do next in regard to noise.

MEDIATION

Mediation included all the affected parties: communities, Port of Seattle, airlines, pilots, airport users and the FAA. Mediation was voluntary; everyone voluntarily agreed to participate and to support any agreement that resulted.

There were features unique to the process: *A neutral mediator; *technical experts selected by the mediation committee; *inclusion of any and all noise abatement options for discussion; *direct involvement by decision makers. With decision makers at the table, acceptance of an agreement by the individual agencies and airlines would be more likely and would help ensure that implementation of a plan could proceed quickly, avoiding the lengthy review and comment process that can occur with the Part 150 program.

On March 31, 1990, 17 months and nearly 150 meetings after the Mediation Committee met for the first time, and after hiring 4 consultant teams and spending nearly $1 million, the Mediation Committee reached agreement on a comprehensive package of new noise programs for Sea-Tac, a customized package designed to cut Sea-Tac's noise in half by the year 2001. With this agreement we feel that Sea-Tac will surely have one of the most comprehensive noise abatement programs in the country.

The vast majority of our noise reduction will result from two programs that phase out Stage 2 aircraft over time -- a Noise Budget and a program that gradually eliminates Stage 2 operations at nighttime. These programs were not designed to limit growth or capacity, indeed the reverse. Growth can occur through thoughtful planning and scheduling and through replacement of the noisier and older aircraft with quieter newer ones. Sea-Tac's two new programs will both be operational by January 1, 1991.

The Mediation Committee agreed to a number of other noise abatement actions, each designed to address specific noise problems in Seattle. These include significant increases in the rate of sound insulation, strengthening of our ground noise regulations, upgrading of the flight track compliance and monitoring program and establishment of a committee to keep the implementation of all these programs on track.

One topic on which the committee could not reach agreement was changes to flight tracks. People who had overflights tried to negotiate them away, but agreement could not be reached with neighborhoods that didn't currently have them. Although there were disappointed mediation participants who had hoped for flight patterns that they felt represented a more equal distribution of noise, it was apparent that this particular topic would be very difficult if not impossible to mediate. We believe this experience mirrors that of other airport operators, including that of National Airport here in Washington D.C. When the FAA announced during mediation that capacity enhancing flight track changes were planned -- the so-called 4-Post Plan -- this added greatly to the frustration of many of the participants. I will comment on this later in my testimony.

Regardless of the FAA's new flight track plan, the general issue of changing flight patterns was the most difficult and divisive we faced in mediation. We were disappointed that no agreement could be reached and we know this has made many people unhappy. The fact that flight tracks in the Seattle area cannot be changed without impacting one neighborhood at the expense of another gives added value to the noise budget and nighttime programs. These two long-term programs will provide noise relief for everyone regardless of where they live.

The Sea-Tac mediated agreement made everyone a winner but not without everyone giving something in return. We know of no other mediated program involving noise reduction of a similar scope or apparent success. In the truest sense, this was a major cooperative effort, with the public as a significant and active player.

RECOMMENDATIONS

I would like to make several recommendations based on Sea-Tac's recent experiences.

First, the Port of Seattle regards aircraft noise as a serious environmental issue that is affecting community acceptance of the nation's airports. We cannot hope to increase airport capacity in this country without enacting meaningful noise programs that promise real, measurable improvement. If we are to successfully plan the future and solve the problem of too much air traffic and not enough airports or runways, we must simultaneously and aggressively tackle the noise issue so that communities affected by aircraft operations feel that we, their elected officials, are making progress on their behalf.

Sea-Tac is running out of space. We and our surrounding counties are trying to reach agreement on what we will do in the coming years. Where can capacity be added? If airports are not allowed to develop noise abatement programs that are tailored to a particular community, no one is going to accept a new airport or expansion of the facilities at an

existing airport. We hope that those airlines seeking at the national level to limit airports' ability to enact locally developed noise programs realize they may be harming their self-interest. If the public is not satisfied with the efforts of local officials in enacting noise regulations, it will fight every effort an airport undertakes to increase the ability of its runways and other facilities to meet growing demand. The airlines will find themselves operating in a very crowded and hostile environment that won't allow them to meet market demands. Effectively resolving noise issues locally is critical to achieving added capacity.

A national plan for phasing out the Stage 2 aircraft is necessary to assure progress will be made in a predictable manner. However, we emphasize that, under any policy, flexibility is needed to allow local communities to tailor a plan to local conditions. A plan such as Sea-Tac's, that was negotiated to efficiently address the specific problems at our airport and in our community, should not be preempted by a less definitive or weaker national approach. Consideration also must be given to a cut-off date for final registration or importation of Stage 2 aircraft into the United States. The Port of Seattle supports the position of the Airport Operators Council International (AOCI) on this topic.

In regard to the issue of localities developing their own programs like Sea-Tac's Noise Budget, it is imperative that the FAA participate actively in the development of such noise reduction plans. To do so will ensure that a balance between all interests can be preserved and that residents, airlines and the airport operator can realistically negotiate with knowledge about the needs of the national system, thus preventing a plan that adds to the "patchwork" of regulations. If the FAA can participate in discussions throughout the development of such programs, they can help airports, their tenants and local communities determine that a proposed restriction does not conflict with the national interest or they can alert the participants to other technical matters that are not being correctly pursued. The FAA's active participation will assist all parties in arriving at an efficient plan that can be smoothly implemented. It will also greatly minimize the risk of one party making an after-the-fact objection, thus jeopardizing the good faith efforts of all the other participants.

During Sea-Tac's mediation, when the committee was negotiating over the Noise Budget and Nighttime Limitations, the FAA was placed in a kind of limbo. Its representatives attended countless meetings but were not allowed by current FAA policy to actively take part in the negotiations or even play a role in some key discussions. We realize that the FAA's presence was a positive factor, as it maintained open channels of communication. However, the FAA could have been a far more valuable participant if its representatives had been able to participate in a more direct advisory role. Again, we want to have the FAA present to make the more critical parameters of the national interest clear to the participants as they work towards a noise reduction program.

I would like to digress here for a moment and describe the issue of FAA-initiated flight pattern changes that I mentioned earlier.

During mediation, because of mounting concerns for maintaining safety, lessening congestion, and improving capacity the FAA announced plans for major flight track changes in the greater Seattle Metropolitan area. The uproar over this announcement nearly destroyed the mediation process and very clearly demonstrated the link between preserving and improving airport capacity and mitigating or reducing aircraft noise. Many communities were vehemently opposed to the FAA's proposed new plan while the airlines promised that they would back off from their commitment to the mediated agreement if the FAA plan is rescinded or invalidated because of a lawsuit.

Two days after the Mediation Committee reached agreement on the new noise programs, the FAA implemented the new flight patterns and there was significant community-based opposition. Sea-Tac's experience illustrates that changing a flight track can be very politically damaging to an airport and can overshadow even a progressive noise abatement program.

CONCLUSION

To conclude, I would like to reiterate some of our major points:

-Communities throughout the country need a national policy on the phase out of Stage 2 aircraft to provide a minimum guarantee of improvement in the next ten years and to help the aviation industry gain support for its needed capacity improvements.

-A national policy may not be enough for some communities. In such cases, locally devised plans, such as Sea-Tac's, can be responsibly developed and implemented to respond to unique, local concerns.

-Sea-Tac's mediation process brought together all the relevant parties to negotiate new noise programs for Sea-Tac. It was an extremely complex process that enabled us to develop noise reduction programs that are not capacity restraints on Stage 3 aircraft. Any actions that Congress considers should not preempt such mutually supported local agreements.

-The FAA needs to become more active in its participation in locally developed noise reduction plans, such as Sea-Tac's noise budget, to assist the participants in better understanding the needs of the national system and to guarantee that a properly developed program can be smoothly implemented.

This concludes my comments and we thank you for providing the Port of Seattle with this opportunity.

9190L

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TESTIMONY BEFORE THE HOUSE PUBLIC WORKS AND TRANSPORTATION SUBCOMMITTEE BY ASSEMBLYWOMAN MAUREEN OGDEN, MEMBER OF THE NEW JERSEY ASSEMBLY, DISTRICT 22

Tuesday, September 25, 1990

Printed on Recycled Paper

TESTIMONY BEFORE THE HOUSE PUBLIC
WORKS AND TRANSPORTATION SUBCOMMITTEE
BY ASSEMBLYWOMAN MAUREEN OGDEN,
MEMBER OF THE NEW JERSEY ASSEMBLY, DISTRICT 22

Tuesday, September 25, 1990

When I read of the introduction of the Expanded East Coast Plan on February 12, 1987, I had not the slightest inkling that this would become a monumental issue for New Jersey because the FAA never disclosed the scope of the EECP as required by law. In subsequent days and weeks angry phone calls and letters poured into my office from constituents. When it became known that I cared about this issue, I soon found myself being asked for help by communities and individuals far beyond the boundaries of my legislative district, the western sections of Essex and Union Counties.

The towns in my district lie at least fifteen miles west of Newark International Airport, and I began hearing from individuals who lived forty and fifty miles away from the airport. This issue has never been one in which we were dealing with the "noise footprint" of the Airport itself. In fact, my hometown of Millburn Township was an established suburb decades before the Airport began its commercial operations in the 1930s. This was not a case of people buying their houses at inexpensive prices next to an airport, and then complaining about the aircraft

noise. It was the exact reverse. The residential communities existed before the airport began its commercial operation.

From previous experience, I knew how intractable federal agencies could be. Despite the odds, I believed that it was a battle that must be joined. If New Jersey residents did not cry out against the thunderous highway placed over their heads by the EECP, the air traffic would damage permanently the quality of life in our small, crowded state. Residents are entitled to the quiet enjoyment of their homes without the unwelcome intrusion of the roar of heavily loaded aircraft every few minutes. While those living near the airport have always experienced noise, the new phenomenon, created by the EECP, was a tremendous increase in the number of aircraft at low altitudes flying over residential areas from 10 to 50 miles from Newark Airport.

After convening a meeting of angry residents on the EECP in the spring of 1987, it was decided to organize a task force that met on a quarterly basis to provide communication among the interested parties and seek modification of the EECP. This was a bipartisan task force. I invited our two U.S. Senators; Members of Congress and state legislators whose districts were impacted; representatives from county boards of

freeholders; representative mayors; spokesmen of citizens' organizations; and representatives of the FAA, PA, ATA (Aviation Transport Association), and ADC (Aviation Development Council), the New Jersey Department of Environmental Protection and the New Jersey Governor's office.

In addition to this task force a high level Executive Review Committee was formed, at the behest of Continental Airlines, of eight individuals representing the FAA, ATA, ADC, Port Authority and Continental Airlines as well as the Governor's office, DEP, Chairman of the citizens' coalition and myself. While these two groups increased each other's understanding of problems on both sides, the meetings only produced minor changes by the FAA in the flight patterns. The FAA was not willing to initiate major changes. It has become very evident that the only solution is a rollback of the EECP.

As the members of this Congressional Committee can appreciate, we found ourselves confronted with two different, but related problems--the EECP and noisy aircraft. While state officials could continue to exhort the FAA to give relief by rolling back the EECP, the FAA is only accountable to federal Representatives. The most effective role that I, and other state legislators could play, was to urge the Port Authority to begin a phaseout

of the noisy Stage 2 aircraft which operated out of its three airports--Newark, LaGuardia and JFK.

My first step toward achieving this goal was the sponsorship of a resolution asking the New Jersey Assembly to establish an "Airport Noise Abatement Study Committee." This five member, bi-partisan committee held five hearings throughout the State of New Jersey in the fall of 1987 and published its recommendations in the spring of 1988. The most important recommendation that the Task Force presented to the Assembly was a phaseout of the noisy Stage 2 aircraft from the PA airports by the year 2000. In the waning days of our previous Session, this bill narrowly failed because the FAA, PA and airlines lobbied heavily against it and forecast the loss of thousands of jobs in Newark. Since that defeat in January, I have had the opportunity to explain to the Newark delegation that the bill does not threaten jobs and does provide the necessary relief if an adverse economic impact occurred. It is my hope that this bill, A-2949, will soon move in the Assembly, together with an identical version in the Senate, sponsored by a highly respected Democrat from Bergen County, Senator Matthew Feldman.

Let me explain briefly the key provisions of the bill. As of December 31, 1992 at least 20% of the aircraft using the three airports would meet Stage 3 noise

levels, and each year thereafter at least an additional 20% of the aircraft using the airports would meet Stage 3 noise levels. The Stage 3 noise levels would be in compliance with the FAA's standards--hush kits, re-engining or new Stage 3 aircraft. Currently, the level of Stage 3 operation, as defined by the FAA, at the three metropolitan airports is as follows:

JFK.....69% Stage 3

LaGuardia.....24% Stage 3

Newark.....41% Stage 3

As of December 31, 1996 my bill provides that all aircraft using Newark, LaGuardia and JFK would meet Stage 3 noise levels. However, the Port Authority may grant extensions during 1996, not exceeding three years, to those carriers which demonstrate that they have firm orders for new Stage 3 planes or converting their existing Stage 2 planes over a 3 year period. Thus, the bill requires that all air carriers achieve 100% Stage 3 compliance by December 31, 1999.

A temporary exemption, beyond the year 2000, for a carrier could be provided in my bill if the conversion to Stage 3 produced an adverse regional economic impact. Some members of business and industry organizations felt that the phaseout of noisy Stage 2 aircraft would mean a loss of jobs and economic activity for our region. In

response to this concern, I amended the legislation to provide for a process whereby the regional economic impact could be evaluated. This would be done through a public hearing process by the Port Authority in the same way in which the Port Authority evaluated the economic impact on the region when Stage 1 was phased out in the early 1980s.

In order to obtain further information on this important issue of economic impact, my office contacted several airports--San Francisco International, Logan and John Wayne International--to learn if the restrictions which they had adopted regarding noisy aircraft had resulted in a loss of jobs. These three and other smaller airports responded that no jobs had been lost. Several stated that there had been an increase in both cargo and passenger flights.

I believe that the Members of the Committee know that the European Economic Community is adopting a non-addition rule for Stage 2 aircraft in November of this year and that the Nordic countries have already imposed operating restrictions that will require an all Stage 3 fleet by the year 2000. It is clear that the noisy Stage 2 aircraft are not welcome in Europe. It would be a sad state of affairs if we in this country were forced to see our current noise problems exascerbated by an increase in the noisy Stage 2 that can no longer be flown in and out of

European airports. Already American air carriers are buying European Stage 2 jets. We cannot let U.S. carriers divert a larger percentage of Stage 3 for use in the European market while at the same time increasing Stage 2 in their domestic market.

A most appropriate model has been suggested by the Airport Operators Council International which includes the following key points:

* a cutoff date of December 31, 1990 for final registration or importation of foreign Stage 2 aircraft;
* allow leases for Stage 2 from foreign sources to continue but in no greater number than an airline had in its fleet on December 31, 1990;
* set a December 31, 1999 date for the final phaseout of all U.S. Stage 2 aircraft;
* require carriers to submit phaseout schedules to the FAA by December 31, 1992 showing the number of aircraft expected to be removed from the carrier's fleet as of December 31, 1994 and December 31, 1997. The FAA will determine if this constitutes reasonable progress;
* airport operators can choose to permit continued operations by Stage 2 aircraft beyond the end of 1999 if they determine that such action is

in the best interest of the community they serve. However, such action does not allow those Stage 2 aircraft to fly into other airports.

This is a model that would be most appropriate for the FAA to adopt. But, airport operators must retain their current rights to require more stringent regulations if local noise conditions require them.

Last August the Port Authority adopted a non-addition rule for Stage 2 aircraft between the hours of 12 midnight and 6 A.M. for carriers using the three airports with the target of eliminating Stage 2 operations by December 31, 1991. This was a good first step, but the Port Authority clearly needs to provide stronger leadership. Our metropolitan area is unique with its tremendous number of aircraft operations and high population densities.

Passengers and freight from Newark Airport are projected to double by the year 2000. Can you imagine what this will mean to the human beings living below these highways in the sky? It is vital that this issue be addressed by the various levels of government with a sense of urgency. Other enlightened countries around us have charted their course. The mental and physical health of millions of Americans will be harmed if we do not. The proper environmental use of the air space above our heads

is every bit as important as the proper use of other natural resources such as land and water.

The FAA has abandoned its responsibility to protect the environment and the human beings living below the highways of roaring planes as it caters to the airlines. The social contract between the government and the people has been broken as an "acoustic Chernobyl" has grown and spread over the state like a cancer.

I hope that the Members of this Committee will be encouraged to take action to alleviate this ever increasing problem of noise pollution generated by noisy Stage 2 aircraft. I do thank the Members of the Committee for their courtesy in inviting me to testify today.

TESTIMONY ON AIRPORT NOISE AND ENVIRONMENTAL POLICY AS IT RELATES TO THE CITY OF TAYLOR AND DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

BY

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SEPTEMBER 25, 1990

BEFORE

THE SUBCOMMITTEE ON AVIATION

U. S. HOUSE OF REPRESENTATIVES

Remarks of the Honorable Cameron G. Priebe, Mayor, City of Taylor, Michigan

Chairman and Distinguished members of the House Subcommittee on Aviation. Thank you very much for giving me the opportunity to speak on behalf of my 70,000 + constituents in the City of Taylor, Michigan. I would like to give a special thanks to my Congressman, William D. Ford, for his consideration in providing me an opportunity to speak before this distinguished body. The City of Taylor is located just one mile east of Wayne County's sprawling Metropolitan Airport. We feel that we are very good neighbors, willing to do what is best for the citizens of Southeast Michigan. We, however, are constantly affected by noise generated by the airport. As one of the 15 largest cities in Michigan, we appreciate the opportunity to talk about our problems relating to noise and the environment here today. I appear today in an attempt to represent my constituents and their concerns as they relate to airport noise.

I am deeply concerned with events relating to the existing operation and future expansion of Detroit Metropolitan Wayne County Airport. From a regional perspective, an expanded airport will create needed jobs and economic opportunities in the Detroit area. The City of Taylor will share in this economic benefit. The City also has disproportionately shared in the negative aspects of the airport including aircraft noise in our neighborhoods, public safety responsibilities and storm water flooding and pollution in open water courses. The City of Taylor recognizes the potential benefits of an expanded airport but is only willing to support the expansion if the negative environmental impacts caused by the airport's operation are immediately addressed.

I cannot stress strongly enough the need to improve conditions within our neighborhoods prior to expanding the airport's operations. A general aviation airport at the site of Detroit Metro was originally established in 1928. The activity at this airport by both civilian and military operators into the 1950's did not significantly affect neighborhoods located in the City. Residential developments in the City in the 1930's through 1950's were little affected by airport operations. However, with the advent of commercial jet service at the airport, impacts on our neighborhoods dramatically increased. Plans to expand the airport and how it operated were implemented over a 30

year period with little consideration given to nearby residents. Most recently, in 1984, Metro Airport was designated as a major hub for a commercial air carrier. The consequent changes in the level of activity and changes to flight patterns, created even more severe problems for our residents. The 1986 noise study conducted by Wayne County indicated that 15,320 residents lived within the 65 LDN noise contour. The City cannot tolerate additional increases in activity at the airport until noise and other environmental problems are addressed by Wayne County and the FAA.

County officials have indicated that Detroit Metropolitan Wayne County Airport cannot develop regulations that will reduce noise and other environmental problems affecting Taylor residents because of national airport competition and perceived adverse economic impacts. The City of Taylor is a member of NOISE (National Organization to Insure a Sound-Controlled Environment) and has attended three national conferences. These conferences have provided an opportunity to discuss airport noise and environmental concerns with the FAA, Airplane Pilot's Association, airport operators, community activists and local community officials. The problems experienced by Taylor are duplicated throughout the nation. Thus, Congress must take a leadership role requiring that environmental conditions be considered by our nation's airports and that adequate funding is made available.

Disregard by the FAA, airport officials and aircraft carriers of local residents need for an improvement in their quality of life has resulted in a number of important grass root initiatives in the Detroit area. The City of Taylor has filed a lawsuit against the FAA for approving a deficient Environmental Impact Statement. The City has also brought a suit against Wayne County for storm water flooding and pollution from the airport operation during wet weather events. Residents in nearby Dearborn have successfully filed a petition requiring a vote of the Wayne County electorate regarding a proposed bond issue to expand the airport. No longer can air transportation officials plan the expansion of the airport while ignoring the impact on local communities and their residents.

Much of this local initiative would be unnecessary if Congress would take positive steps to ensure that airports became better neighbors. Congress should address the following:

1. Adoption of a better method to define noise.

2. Requiring that the Environmental Impact Statement and Part 150 Noise Study be more comprehensive, realistic and implementable.

3. Address the need for a quieter airplane fleet (Stage 3 planes in the Unitied States.

4. Address land usage problems around airports.

5. Increasing Federal funding to make airports better neighbors.

Should Congress act on making airports better neighbors, the impact on Taylor would be very beneficial. This testimony will express some of the problems the City has with the airport and how changes by Congress are needed.

NOISE

Understanding aircraft noise and how it impacts a community is very important to resolving noise issues. Congress in 1981 formerly adopted LDN (day/night average noise) as the best description of noise for land use planning. The FAA uses LDN as the single source of measurement of aircraft noise. The LDN measurement, however, does not measure single event loud noises; does not measure noise frequency which rattles windows; does not adequately measure intermittent events when noise is compressed into several hours during heavy airport use; nor does it measure seasonal traffic or seasonal changes in peoples living patterns such as open windows or outdoor activities

in the summer. The LDN is not a bad measurement. However, other noise measurements must be considered recognizing the complexity of noise and its effect on people. A more accurate assessment of noise around Detroit Metro Airport would have identified airport noise problems in Taylor that need to be, but were not, addressed.

The expansion of Metro Detroit airport provides for a new east-west runway to be constructed. The flight pattern for this new runway will extend over eight residential neighborhoods. However, because the new east-west runway is a cross-wind facility, it will only be used when wind conditions require its use. Thus, the new flight patterns over the subdivisions are not within the future 65 LDN contour. The Environmental Impact Statement (EIS) only addresses those areas within the 65 LDN contour. In addition, none of the homes within the 8 neighborhoods will be eligible for monies to mitigate noise problems. The EIS also did not address potential noise problems for two elementary schools and a school for the blind which will be directly impacted by the new flight patterns from the proposed E-W runway.

Engine run-up noise is also a serious problem in Taylor. Presently, aircraft that have undergone minor engine repairs are tested at full throttle for an extended period of time. Such run-ups occur at night and out doors. This noise greatly affects Taylor residents while they sleep. The Environmental Impact Statement

did not address ground run-up noise since no measurement of this noise was attempted. The Part 150 Study indicated that requiring hush houses would be explored by the aircraft carriers and the airport only after the City of Taylor raised the issue at a Part 150 Technical Study Committee meeting. Upon completion of the EIS and Part 150 studies, the City of Taylor and Wayne County had a series of meetings to discuss implementation efforts to reduce noise and other environmental problems. Ground run-up noise and hush houses were discussed. However, when pressed on actually constructing a hush house, the City of Taylor was told that there was no evidence of ground run-up noise and the City would have to prove its existence. The County had made no effort to study the issue. The thoroughness of the EIS and Part 150 Study must be questioned, and the assurance that these studies would result in action to reduce noise cannot be relied on by local officials and residents.

The most effective measure to reduce airplane noise is to have air carriers fly Stage 3 aircraft. Congress should take steps to mandate the elimination of Stage 2 aircraft operating in the United States by the turn of the century. It is estimated that the 65 LDN or greater contour around the Detroit Metro Wayne County Airport will be reduced to airport owned property once an all Stage 3 fleet is in place. Thus, a significant reduction of noise in Taylor neighborhoods would be achieved by eliminating Stage 2 aircraft. However, without Congressional

action mandating an all Stage 3 fleet, Stage 2 airplanes will be utilized well into the next century.

A serious noise problem involves the use of Stage 2 aircraft at night. Generally, air freight companies operate at night and utilize Stage 2 planes that have been retired by commercial air carriers. A loud plane over a residential neighborhood can be very disruptive. A time table should be developed which will phase into use Stage 3 airplanes for night use. The reduction of Stage 2 flights at night should occur as rapidly as possible. It is known that engines can be retrofitted to change Stage 2 aircraft to a Stage 3 configuration. It is anticipated that the entire fleet of airplanes operating in the United States could be retrofitted by the mid 1990's. Retrofitting an engine is a multi-million dollar cost that will not occur voluntarily. Congress must act on requiring quieter airplanes.

LAND USE

Land use around an airport is critical to a community being a good neighbor to the airport. A number of land use issues must be addressed. These issues include planning and development of land use, quantity and quality of storm water leaving airport premises, public safety responsibilities and infrastructure to maintain surface transportation routes, utilities and other public services.

The land use concerns near Detroit Metro Airport represent long standing problems that have been constantly getting worse. Detroit Metropolitan Wayne County Airport began in 1928 as a general aviation airport. In 1931 through World War II it was utilized by the Michigan Air National Guard and the U.S. Army. In the early 1960's the airport began commercial flights and in 1972 a master plan for the airport was developed. Much of the residential development in Taylor impacted by the airport was built prior to the 1950's and the major new residential growth in Taylor had ended prior to preparation of the 1972 airport master plan. As the airport expanded over the years, these existing residential neighborhoods became more and more impacted by noise and storm water runoff. In 1984, Republic Airlines (acquired by Northwest Airlines) made Detroit Metro a major hub airport. Between 1984 and 1988, enplaned passengers at the airport increased by nearly 4,000,000. The increase in large commercial aircraft flights has greatly increased noise in nearby neighborhoods. It is projected that with the proposed airport expansion, enplanements will increase over 6,000,000 passengers between 1988 and 2000. It is mandatory from Taylor's perspective, that environmental problems be resolved prior to any expansion by the airport.

Airport noise has a very detrimental affect on residents in the City. In 1986, 5170 housing units in Taylor with a population of 15,320 people were living within the 65 LDN and greater contour. Residents experience stress and health problems from this noise. Often residents, many who are elderly, call City hall distraught over aircraft overflights which appear to be lower, louder, or more frequent than usual. Normal conversation over the plan is often interrupted by overhead flights. Watching television or enjoying an outside barbecue often becomes impossible. During most daylight hours an airplane will pass overhead every minute and a half or less depending on the direction of takeoffs and landings. This constant noise generated during these busy hours is very disruptive to family activities and is not given special attention when planning ways to reduce noise in neighborhoods because the average LDN noise measurement does not identify the problem.

Property values in these neighborhoods are understandably depressed. Some homes may be devalued 20 percent or more from comparable homes outside of the airport vicinity. Such devaluation not only represents a personal loss to the family, but requires higher property taxes to pay for school and City services.

These residents deserve compensation for their loss through such programs as soundproofing. Although a variety of programs are included in the Part 150 Study for Metro Airport to mitigate

noise problems in neighborhoods, funding for such programs is woefully inadequate. The Part 150 Study estimate of total monies likely to be available and the scope of the problem suggests that no funding will be available to Taylor residents until towards the end of this decade; and the monies available will require many additional decades of funding to assist all households impacted by noise in Taylor. This simply cannot be tolerated.

The City of Taylor has an opportunity to avoid creating new noise problems by locating only compatible land uses in airport noise impacted areas. The City will take the necessary land use measures to be a good neighbor to the airport. However, this may not be easily accomplished without Congress providing a better mechanism for local communities to be a part of airport master planning.

Congress has mandated that an Environmental Impact Statement be prepared prior to major airport expansion. Federal monies are also available to prepare an airport master plan and a Part 150 noise study. These planning mechanisms provide for public hearings and, for the Part 150 Study, several committees to be established with local officials invited to sit on these committees. This planning process established by Congress needs to be greatly improved. Local officials must have a more meaningful role in preparing plans that so greatly affects them. Presently, the local role is one of review. No meaningful role in formulating plans is provided.

A new master plan for the development of the airport was prepared by the County over a three to four year period. The plan identified two new runways, a new terminal building and a new southern access which would become the main entrance to the airport. Although the new runways and new southern access greatly impacts the use of land in Taylor, the City was not consulted in the preparation of the plan. The City made hundreds of land use decisions through zoning and site plan approvals based on the configuration of the current airport development. The City did not receive a copy of the plan until the Part 150 Study was organized. Once developed, the County was committed to the plan. All consequent studies, the Part 150 and the EIS, were conducted based on the new airport master plan.

The City of Taylor participated in the Policy and Technical Committees formed as part of the Part 150 planning process. The City was represented by myself, as Mayor, and by City technical staff in the Planning Department. Noise and aviation safety is a very complex issue. The City joined NOISE, a national organization of local communities impacted by airport operations, and spent thousands of man hours and considerable money to study the issue.

When the City representatives suggested a number of ideas and programs to be studied, the airport proprietor and consultant dismissed these ideas as being unrealistic, uneconomic or operationally unsafe. Today, many of these ideas are being considered in response to lawsuits and voter initiatives.

Congress should mandate that local municipalities impacted by airport operations be brought into the planning process at the beginning of formulating airport expansion plans. Most importantly, ongoing Policy and Technical Committees should be established for the master plan and the Part 150 Study. Local municipalities on these committees should collectively be represented by airport noise experts that are directly retained and work for the local municipalities. Federal funding should support this effort in the same manner that airport proprietors are supported with funding to hire experts. This will allow local officials to supplement staff expertise with consultants who are expert in airport noise and operations. Once completed, the EIS and Part 150 qualifies the County for Federal funds to expand the airport, but does not assure that environmental issues will be addressed. Findings in the EIS and Part 150 Study need to have a strong implementation element. Discussing programs to mitigate environmental problems is only beneficial if the programs are implemented. Congress should consider funding permanent monitoring mechanisms to ensure that plans are implemented, environmental data gathered and existing conditions evaluated by independent authorities to ensure progress in meeting environmental goals.

Planning is an important element to improving air transportation while ensuring that impacts on local residents are as little a burden as possible. The Aviation System Capacity Industry Task Force Noise Working Group has prepared a final draft recommendation

suggesting that local control of airport operations and land use decisions be limited. Mr. Tom Duffy, Executive Director of NOISE, has characterized these recommendations by stating, "It would appear from the sum total of the June 19 proposals (by Noise Working Group) that the carriers, having gotten themselves deregulated, are now attempting to regulate airports." (From July 10, 1990, memorandum to Charles Bautz, Noise Working Group Chairman.)

My comment on the Working Group's recommendations is that the solution to good planning is not removing local authority but providing local officials with the necessary expertise and opportunity for a meaningful role in airport decisions.

Airport noise and its detrimental affect on residents will continue to be a problem even if noise mitigation measures are implemented. Expanded airport capacity will increase air traffic over neighborhoods and the frequency of flights will create a nuisance even with quieter Stage 3 flights. A national air transportation plan establishing new airports in more isolated areas of the countryside is needed. Only by creating new airports will the congestion at current airports be alleviated and only then will Taylor citizens will be spared from an ever increasing noise problem as has occurred over the past 30 years.

Airport planning provides an opportunity to address other environmental problems associated with the airport besides noise. For Taylor,

a significant problem is the storm water runoff from the airport. There is a problem with both the quantity of storm water flowing from the airport as well as the quality of the storm water. Taylor is located one mile downstream from the airport. Storm water is retained on airport property in several retention basins. These basins are also used to store ethylene glycol, a de-icing solution. A large storm event that occurs when the retention basins are full of stored ethylene glycol creates significant problems for the City of Taylor. The release of storm water from these airport retention basins during wet weather events has resulted in overland flooding in Taylor. Just this year, the County released retained water during a storm event causing not just one, but two separate flooding events in Taylor on February 22 and again on February 23. Storm water flooded roads and entered homes through basement windows and through doorways. Loss to residents was substantial.

The released storm water was contaminated with ethylene glycol. Such pollution does not just occur during storm periods. The Southeastern Michigan Environmental Resource Association, Inc., an environmental group headquartered in Ann Arbor, prepared a report released August 23, 1990, that reports that Detroit Metropolitan Airport has violated its federal waste water discharge permit more than 800 times. Nearly half of these violations have occurred in the past two years. The SMERA news release dated August 23, 1990, states:

Waste water discharge of ethylene glycol and 1, 4 - dioxane by the Detroit Metro Airport has gone unchecked for years. Ethylene glycol in small doses is lethal while 1, 4 - dioxane in miniscule doses is carcinogenic. Each year Detroit Metro discharges a minimum of approximately 70,000 lbs. of ethylene glycol and 416 lbs. of 1, 4 - dioxane.

City residents have lived with these storm water conditions for many years. Airport expansion will greatly increase the amount of storm water and the ethylene glycol used at the airport. The City of Taylor strongly advocates that the current storm water problems be addressed prior to future expansion. The City has brought a lawsuit against Wayne County to support this position. Not only should the problem be corrected now, but damages suffered because of storm water flooding created by the airport's release of storm water from holding ponds should be paid by the County. The County's current stated position is that flooding on airport property must be avoided so that airport operations are not terminated during a wet weather event. Release of storm water to flood Taylor residents is the alternative that airport officials use. A tremendous increase in storm water because of airport expansion could be disastrous to the City. Although the EIS addresses the need to improve storm water retention on airport property, the City has no assurances that the EIS recommendations will be implemented.

Living near the airport can create hazards as documented above, but also creates opportunities and responsibilities. Opportunities exist to attract economic development to locate in close proximity to the airport. The City has a growing industrial sector within the City. This partially offsets the devaluation of the City's housing stock which is located within the 65 LDN contour. The airport also provides an estimated 769 jobs for our citizens. Responsibilities also exist. The City has spent considerable local resources to provide an adequate road system. Four and a half miles of major roads have been improved to a five lane highway in the past three years. Another two miles will be completed by 1992. This improved road system provides access to the airport for passengers, workers and business firms. Road maintenance and law enforcement is provided by the City to ensure safe roads.

The City has also spent large sums of money to improve storm drainage systems. The City has four storm water retention basins it has constructed and plans to add at least two more in the next several years. City resources have also been spent to clean and widen over 30 miles of County drains to ensure the efficient flow of storm water.

Emergency preparedness is another responsibility accepted by the City because of its close proximity to the airport. City public safety personnel have joined neighboring communities

in simulated disaster test coordinated by Wayne County's Emergency Management Divison. The City's police and fire departments assisted Wayne County during the tragedy of Flight 255. Overtime was authorized and auxiliary personnel used. The City also funded counseling services for personnel that were traumatized by the experience. We all pray that future tragedies can be avoided. However, as recently as two weeks ago, an airplane developed engine problems and dumped 10,000 gallons of fuel over one of the City's residential subdivision prior to making an emergency landing.

CONCLUSION

The City only requests that the airport become a good neighbor. The City, on its part, also pledges to be a good neighbor to the airport. Congressional action, however, is needed for this cooperation to become a realty. The City of Taylor would like to see Congress consider the following:

1. Congress should mandate an all Stage 3 aircraft fleet by January 1, 2000.

2. Air freight carriers should be required to fly Stage 3 aircraft or retrofitted Stage 2 aircraft for night flights by January 1, 1996.

3. Congress should establish a more comprehensive noise measurement standard that considers the various realities of noise.

4. Congress should provide local municipalities around airports funding to retain their own experts for airport related issues.

5. Congress should provide a planning framework for airports that provide local municipalities with an early, meaningful role in the airport planning process.

6. Congress should require that findings in the Part 150 and EIS processes be implemented and a permanent monitoring system should be mandatory.

7. Congress should develop a national air transportation plan establishing new airports to alleviate congestion and noise at existing airports.

8. Congress should provide increased funding for noise abatement by creating a user fee system on ticket purchases by customers of the airlines.

Statement Made by Patrick J. Russell, Esq.
on Behalf of
New Jersey Coalition Against Aircraft Noise (NJCAAN)
Before the Subcommittee on Aviation
September 25, 1990

Patrick J. Russell
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Executive Summary

New Jersey Coalition Against Aircraft Noise (NJCAAN) establishes that the National Environmental Protection Agency (NEPA) does not permit the Federal Aviation Administration (FAA) to exercise unfettered discretion to apply a cruel social calculus promoting the welfare of society over individual liberty. NEPA promotes governmental accommodation with individual entitlement to the environment and repudiates unreasonable agency action.

NJCAAN suggests legislative and regulatory modifications to conform to and extend these above-mentioned NEPA aspects. NJCAAN proposes the following changes:

(1) FAA notice for programs and plans to be in non-technical ordinary language and widely and commonly disseminated;

(2) Statute of limitations modification granting more time for citizens to sue, and as a deterrent to FAA, require it to plan with a longer statute of limitations;

(3) Changing Council on Environmental Quality (CEQ) regulations by removing agency discretion to perform certain environmental evaluations to require the agency to perform the evaluations;

(4) National Noise Policy reflective of local control of noise abatement (no national noise standard);

(5) Modifying Equal Access to Justice Act to encourage parity between the FAA and citizen litigants.

The history of the past three years has shown the Expanded East Coast Plan (EECP) has failed on its own terms, airline delay reduction, in the New York Metropolitan area and accordingly should be scrapped or rolled back.

An excellent way for members of this Committee to acquaint themselves with the nature of the Federal Aviation Administration (FAA) aircraft noise crisis, and its effect on New Jersey citizens, is to listen to the fine people before you on this panel. They are representative of the thousands of New Jerseyians who have been suffering and contesting a relentless barrage of official sonic terror resulting from the FAA's Expanded East Coast Plan (the "Plan"). You have wisely chosen to hear the New Jersey story. Also worth contemplating is the incredible amount of precious personal time that has been lost by members of this panel and countless others due to the havoc and cruelty introduced to the Garden State by the FAA.

The FAA's implementation of the "Plan" without the requisite environmental evaluations has been destructive to the environment of New Jersey. It has also been a betrayal of citizens by their government, the supreme violation of the common heritage of every person in this room and in this nation. The FAA's conduct has been shameful. To reorganize and redirect the most complex air traffic in the world over the most densely populated state in the nation, without the expectation of a significant environmental impact or substantial public controversy, is incompetent or immoral. Either way, it is a complete subordination by a U.S. governmental agency of the common good to the willful, arcane, and senseless agenda of the agency. Responsible people would have evaluated the environmental consequences and human impact of the "Plan" after the tremendous public outcry, following the implementation of the first phase in New Jersey. However, apparently motivated by undisclosed sources of inspiration, the FAA continued to plow new routes throughout the New Jersey skyscape. Further compounding the New Jersey crisis is

the stated regional logic of this stellar "Plan", airline delay reduction in the New York Metropolitan area, which incidentally has become a farce, with delays steadily and dramatically increasing in record numbers since the "Plan's" inception.

The most outrageous form of injustice in our society is official injustice. If our government turns on us, who will protect us? We in New Jersey hope the answer to that question is this great branch of our government, the Congress of the United States. For it is Congress which is the first among all branches of government because of its law-making function and its source of authority, the consent of the governed. The first article of the Constitution deals with the legislative power and "that is not the result of chance: we pride ourselves on being a government of laws, and Congress makes the laws." Berns, W., "Locke and the Legislative Principle," The Public Interest, Number 100, Summer 1990, pp. 147-48. Laws we trust and depend upon for our social and political existence.

We, as citizens in New Jersey, have done everything in our capacity to resolve this great public policy dispute. We have not received the cooperation of the FAA, and we do not have the resources and power necessary to solve this problem ourselves. It is on that basis that we come to you today to protect us from the FAA.

The FAA conduct in New Jersey flows from the unstated but compellingly relevant premise, that the National Environmental Policy Act (NEPA) permits a U.S. governmental agency complete unfettered discretion to make a decision that, as expressed in The Theory of

Justice by John Rawls, serves "the calculus of social interests or the welfare of society as a whole," even if it substantially intrudes upon "the liberties of equal citizenship" by imposing substantially greater hardships on identifiable individuals without compensating them in any way. Runway 27 Coalition, Inc. v. Engen, 679 F.Supp. 95, 105 (1987). Such a preference for social calculus over individual entitlement is an assumed choice, in the New Jersey crisis, of one preference to another of two conflicting principles that pervasively influence the legal system, but rarely produce a result, such as the FAA promoted, of complete rejection of one to serve the other, rather than some form of accommodation between the two. R. Keeton, Entitlement and Obligation, V.6, U.Cinn.L.Rev. 1, 10-13, 39-43 (1977).

For the FAA conduct to be justified in New Jersey, it must be established that, in NEPA, either Congress has mandated such unqualified preference for community interest over individual interest, or at least that Congress has left federal agencies to make such a choice in their unfettered discretion in the application of NEPA to specific environmental impact disputes. The language of NEPA discloses no support for either the claim of mandate or the claim of such unfettered discretion. For example, among the stated objectives of the Act is to:

> attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable or unintended consequences....

42 U.S.C. 4331(b)(3). Runway 27 Coalition, Inc. v. Engen, 679 F.Supp. 95 (1987) (Full Opinion, June 30), p. 24. A more cogent expression of concern for individual rights, merely than the good of the whole

community, is the objective of the Act to achieve a balance:

> between population and resource use which will permit high standards of living and a wide sharing of life's amenities...

42 U.S.C. 4331(b)(5). Runway 27 Coalition, Inc. v. Engen, 679 F.Supp. 95 (1987) (Full Opinion, June 30), p. 24. Indisputable is the declaration that:

> each person should enjoy a healthful environment.... (emphasis added).

42 U.S.C. 4331(c). Runway 27 Coalition, Inc. v. Engen, 679 F.Supp. 95 (1987) (Full Opinion, June 30), p. 24. When read separately and in the context of the entire Act, these provisions express a mandate of individual entitlement from protection against degradation of the environment by **unreasonable agency actions** (emphasis added). City of Irving, Texas v. FAA, 539 F.Supp. 1729 (N.D. Tex. 1981); Runway 27 Coalition, Inc. v. Engen, 679 F.Supp. 95 (1987) (Full Opinion, June 30), p. 25.

Based upon the foregoing analysis and reasoning, I respectfully submit the following recommendations to modify the laws and regulations listed below. These recommendations represent an affirmation of the rights of citizens and the protection of the environment and the repudiation of the opportunity for **unreasonable agency actions.**

I. NOTICE

A. Code of Federal Register (C.F.R.)

Publishing notice in the Federal Register regarding proposed Federal Aviation Agency (FAA) actions is now required by 14 C.F.R. 71. Nevertheless, this form of notice is

inadequate and does not readily serve the public interest. Rather, it is offered that the following should be added to the FAA's obligation to keep the public well informed about its proposed actions that could adversely affect the public. All forms of notice should be written in ordinary, non-technical language to assure citizen access to and understanding of proposed agency plans and programs.

1. Publication in local newspapers (in papers of general circulation rather than legal papers);
2. Notice through other local media;
3. Notice to potentially interested public and community organizations including small business associations;
4. Publication in newsletters that may be expected to reach potentially interested persons;

B. National Environmental Protection Agency (NEPA)

1. Section 1506.6(b)(3), "Public Involvement," 40 C.F.R. Ch. V (7-1-89 edition) now contains permissive language regarding notice to the public about "action[s] with effects primarily of local concern. These permissive actions should be mandatory so as to protect the public's interest in proposed actions which will substantially affect local concerns."

II. Statute of Limitations

Generally speaking, statutes of limitations afford a reasonable period within which persons of ordinary diligence would bring their actions. Nevertheless, the periods of limitations, as enacted by the legislature, are arbitrary ones. Consequently, statutes of limitations may easily be modified by the legislature to assure there is adequate time provided within which a person of ordinary diligence might bring an action.

Under the current law, persons wishing to obtain judicial review of a final action of the FAA must file a petition within sixty days after the entry of such final agency order. Once the sixty days have passed, a petition may be filed only "by leave of court upon a showing of reasonable grounds for failure to file the petition thereto." 49 U.S.C.A. Section 1486.

In order to safeguard a citizen's ability to challenge an FAA order within a reasonable time, it is necessary for the legislature to now expand the statute of limitations applicable to such actions. It is suggested that a reasonable period within which to bring such a challenge is one year, a time period which would remain significantly shorter than many state's negligence, medical malpractice, and contractual limitations periods.

III. Significant Environmental Impact

Under the current NEPA and CEQ regulations relating to environmental assessments and related impact statements, an agency is permitted to "prepare assessment on any action at any time in

order to assist agency planning and decision making." Department of Transportation, Federal Aviation Administration order No. 1050.1D, Policies and Procedures for Considering Environmental Impacts, Chapter 3, pp.189-24 (31-39); United States General Accounting Office Report to Congressional Requesters: Aircraft Noise -- Implementation of FAA's Expanded East Coast Plan, pp. 34-5 (August 1988). Once an FAA order has been implemented, the foregoing regulation allows the FAA discretion as to whether or not it will consider the "significant environmental impact" of its act.

Again, it is necessary for Congress to modify the framework within which the FAA must operate. Agency discretion may not play a role in governmental decision making when the environmental stakes are high and the public's interest is in jeopardy. Therefore, Congress is urged to require the FAA to initiate a full and complete environmental assessment and prepare a detailed impact statement any time an FAA order, once implemented, may have a significant environmental impact or generates a substantial public controversy. Furthermore, we urge consideration of a provision that would require the agency to revert back to its original pre-"Plan" routes or program, if reasonable, until the requisite environmental evaluation permits or denies the new plan's execution.

IV. Noise Abatement -- Local Control

There is a body of law concerning the rights of airport proprietors to control and regulate noise. This body of law

establishes that the federal government has preempted certain areas of regulation governing airports and aircraft. This body of law also establishes a clear and "sound" public policy, which has provided the basis for balancing local concerns over aircraft noise with the national interest in promoting interstate commerce. It defines airport proprietors' obligations and authorities: airport proprietors are responsible for noise levels, abatement and consequently incur liability.

Airlines and the FAA do not particularly care for the proliferation of local airport noise restrictions. They believe that these rules have no place in a deregulated industry environment. Local noise abatement, they contend, unnecessarily complicates scheduling and interferes with their domain.

Increased federal intervention, especially of the nature recently promoted by the Noise Working Group of the FAA's Aviation Capacity Task Force, recommending federal approval over local noise restrictions is unacceptable to the New Jersey Citizens Against Aircraft Noise, as it would undermine local control over noise abatement. Further, of interest to this Committee, such a proposal could trigger the liability of the Federal government for damages flowing from noise.

Local proprietors should determine acceptable noise levels in their own communities. There should not be a noise standard to apply to all airports in this nation. A flexible policy requiring regional and demographic differences is the only sensible and fair

position. Airports are local. It would be unwise to deprive local officials the power to deal with noise problems.

In the face of increased national aircraft noise proliferation, it is our position that the FAA should cooperate more with individual airport operators, state governments, citizens, and local environmental groups in an effort to maximize capacity while minimizing adverse noise impacts. This spirit of cooperation regarding changes in flight rules and procedures within the FAA's exclusive province can lessen residential noise, and potentially disarm the kind of conflict that has emerged in New Jersey before it starts.

V. Equal Access to Justice Act

The FAA has adopted regulations implementing the Model Rules for the Equal Access to Justice Act of 1980 (14 C.F.R. Chapter 1, Sections 14.01-14.30). Despite the FAA's enactment of the model rules, modification is necessary. Specifically, the regulation now allows for the FAA to be excused from paying attorneys' fees and costs to a prevailing party if such an award would be deemed "unjust." In the interest of fairness, the regulation must be amended so as to require the FAA to pay its opponent's attorneys' fees and costs, even if the FAA prevails in the case, when to do so would better serve the interests of justice. Related to this notion of fairness is the need to modify the ceiling on the recovery for attorneys' fees. The present hourly ceiling of $75 warrants immediate change so that citizens wishing to challenge the

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FAA may retain competitive and competent counsel.

I would like to put to rest, on the record, the misguided and cynical notion advanced by various FAA officials that we, as representatives of two hundred twenty communities in New Jersey, held hostage by relentless noise, are merely "imagining" the profound intrusion of this noise in our lives, families and communities. A truly irksome aspect of this problem is the political practice by FAA officials of denying or reducing this profound problem that invades the lives and homes of good and decent people. After spending some time with this issue and agency, it is easy to understand why reductionism is completely compatible with the FAA's minimalist approach to public policy and its consequent disdain for the common good. United States governmental agencies should promote or at the very least show respect for the democratic underpinnings that create and sustain them, not mock and contribute to their deterioration. This Committee would serve the nation well to explore these certain attitudes developing in the national bureaucracy with an eye toward bringing the people and the government closer. The New Jersey experience with the FAA has left many members of NJCAAN not only feeling that the agency is not their government, but that they would not want to be governed by it even if they felt it was.

The quality of life in this nation depends upon the quality of leadership. And the quality of leadership depends upon its level of commitment to principled public policy. What has happened in New Jersey is a poignant illustration of the unraveling of this train of reasoning.

Patrick J. Russell/NJCAAN
September 25, 1990

Please be mindful that most, if not all, of the members of New Jersey Coalition Against Aircraft Noise (NJCAAN) are the grateful beneficiaries of some of the best that America affords. And air travel is an integral part of those opportunities. We are not, by nature or design, anti-FAA or anti-airline, nor do we want to re-route the planes over our homes over the homes of others. We are fully mindful of the kinds of cost benefit analysis inherent in complex governmental commercial organizations. However, we are so adamant in this situation, clearly because of the noise, but also because of the FAA's official conduct that was, and continues to be, patently outrageous, probably illegal, arguably unconscionable, and unquestionably unjust.

When you examine the testimony and our situation in New Jersey, I urge each of you to recall those motivating values and high commitments that propelled you into public life and public service. If you can evaluate our situation with those high purposes refreshed, I am sure you will help us roll back the "Plan" from New Jersey, and assure that no other place in this great nation suffers a similar injustice and environmental degradation. Furthermore, and in a wider and perhaps more important sense, I hope your efforts mark the beginning of a trend toward re-establishing in individual citizens the conviction that the government is theirs once again.

September 17, 1990

Subcommittee on Aviation
Room 2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar and Members of the Committee:

The enclosed testimony is presented on behalf of U.F.O. Noise (Ulsterites Fight Overflight Noise), a citizens' group in Ulster County, New York. Grass Roots, an environmental organization, formed this group in order to effectively organize a response to the increased noise from low level overflights since the implementation of the Expanded East Coast Plan(EECP). U.F.O. Noise reflects the concern of over 1,000 residents in Ulster County who, to date, have signed a petition requesting that the Federal Aviation Administration (FAA) consider the low level of background noise in rural, noise-sensitive areas of the county in the routing and altitude of aircraft.

THE PROBLEM

Ulster is a county located in the Mid-Hudson Valley about 90 miles north of New York City. Before the EECP, noise from jet aircraft did not intrude into the quiet, country settings of Ulster County. Ulster has a reputation for offering many quiet off-the-main road locations and protected public use areas in the Catskills and Shawangunk Mountains to tourists, recreationists, homeowners and second homeowners who look to the area for a reprieve from the noise and stress of metropolitan life.[1]

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1. Among the notable protected public use areas of Ulster County are the Catskill Park and Forest Preserve, the Mohonk Preserve, Lake Mohonk and Mountain House, Minnewaska State Park, Delaware and Hudson Canal Historic Corridor, Ellenville Tract (designated by Heritage Program), and Ice Caves Mountain. All areas except the Catskill Park and Preserve are located on the Shawangunk Mountain ridge in south central Ulster County.

P.O. Box 51
West Shokan, N.Y. 12494

Since the implementation of the EECP with its relocation of airways, increased number of busy intersections, and increased number of jets flying at lower altitudes, there has been a rapid deterioration in the quality of life for those under the airways. For many, the drone and roar of jets above obliterates the quietness once offered by secluded locations which were purchased because of the protection they afforded from traffic and urban noise. For others, who come to the semi-wilderness public use lands of the Catskills and Shawangunks in order to enjoy the serenity of nature, the quiet beauty of the area is now seriously compromised.

Vector 213, an approach for jets into Newark Airport has been a major offender. In 1988 it was moved to its present location over the Shawangunk ridge and the Village of Cragsmoor from a point east of the ridge where, according to our conversations with the Assistant Manager of Air and Space Procedures, Nashua Air Traffic Control Center, it did not have the legacy of noise complaints it now has.[2] Vector 213 is over the hamlet of Cragsmoor, one of the earliest art colonies in the United States. Cragsmoor is known around the world for its unspoiled natural beauty and the artistic inspiration it has offered to artists such as Charles Curran and George Innis, Jr. At an elevation of more than 1900 feet, the Cragsmoor area now reverberates with noise from air traffic, sometimes loud enough to rattle windows in homes and awaken residents from their sleep. A few miles northeast of Cragsmoor, Vector 213 intrudes into the New York State protected semi-wilderness area of Lake Minnewaska and Lake Awosting. Visitors to Lake Awosting now hike 3 1/2 miles through unspoiled wilderness to a lake surrounded by the unique stillness that characterizes a wilderness setting only to hear this stillness relentlessly bombarded by the roar of jets as low as a couple thousand feet above.[3]

EFFORTS TO BRING THE PROBLEM TO THE ATTENTION OF FAA

In our effort to bring these concerns to the attention of the FAA, we have encountered problems of a different kind. We have sent our 1,000 signature petition requesting that the rural noise-sensitive nature of our area be considered in the routing and altitude of airways to Admiral Busey, FAA Washington. The official response to our concerns has been from the Eastern Region Noise Abatement Office, which has reiterated FAA policy rather than address our concern that FAA policy be more environmentally responsive. Furthermore, an Eastern Region official has been cited in a local newspapaer account as claiming that planes are at 16,000 feet to 18,000 feet over Ulster County and that they do not begin to descend lower until 30 miles from the metropolitan airports. This information is discrepant not only with our visual and auditory perception but also with information provided by a local pilot who informs us that planes are given clearance to descend to 7,000 feet

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2. Documentation of our communication with Mr. Ed Green, Nashua Center is available on request.

3. Lake Awosting is at an elevation just under 2,000 feet. sea level when they cross Lake Awosting. (Don Perry, Eastern Region) Jets are descending into Newark at altitudes of 3-4,000 feet above

4. Documentation available upon request. Comments from Ed Trudeau, Eastern Region. Woodstock Times. 8/16/90.

above sea level at a point in north central Ulster County and that they must be close to the 7,000 foot restriction by the time they reach the southern border of the county. They may be this low much further north because they can descend at any point after they are given the clearance.[5]

Citizens in our area have reported ineffective follow through on noise complaints. At times two citizens calling about the same incident have been routed in different directions. A related problem is that the citizen with a noise complaint is in the untenable position of having to determine the appropriate sub-bureaucracy before obtaining a follow-up on the problem. In Ulster County aircraft overhead could be using any one of the metropolitan airports or could be on one of the new ASR-9 approaches for the region's more local airports. A determination of the appropriate bureaucratic domain is impossible in most cases in our region since identifying data on the plane is often less perceptible than the noise level. We realize that the extensiveness of FAA operations requires specialization of function. However, given the FAA's ability to successfully co-ordinate its operations in order to insure safety and efficiency of travel, there must be better co-ordination in the processing of noise complaints if the public is to feel that noise abatement is taken seriously.

Citizens who are routed to the eastern Region Noise Abatement Office encounter other problems. Several have informed us that they have been told that 1) altitudes and routes in our area have not changed and that there has only been a general increase in traffic, 2) that there is no other place for the planes to be routed, and 3) perhaps their reactions are excessive.[6] The effect of this avoidant and misleading approach to the public is to project a concern with abating those who complain rather than aircraft noise.

At the time of the installation of the ASR-9 radar which provided new radar coverage and flight paths in the Mid-Hudson region, we spoke at length with the Assistant Manager of Air and Space Procedures at the Nashua Control Center who was charged with working on revisions in flight paths. He told us that the aeronautical maps at the facility did not identify Minnewaska State Park, the Mohonk Preserve, or the residential Cragsmoor area and that he had no way to identify environmentally sensitive areas.[7] Noise cannot be minimized if environmentally sensitive areas are not identified.

CONCLUSION

Projections for the Mid-Hudson area call for air traffic to double in the next ten years.[8] As the metropolitan area becomes increasingly crowded, both in the air and on the ground, the quiet places necessary for our health and well-being will be even more precious. Their protection will be possible only with an FAA that is

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5. Documentation available upon request. Report from Karl Drake, general aviator.

6. Documentation available upon request. Report from Pat Peters.

7. Documentation available upon request. Ed Green, Nashua Center.

8. Metropolitan Transit Authority projection.

more responsive to public concern and more environmentally accountable. We are asking those in our government charged with protecting the public interest to call for an upgrading of FAA standards in rural areas. Since it is not clear that the EECP has reduced delays at the metropolitan airports, we support a roll back of the EECP in order to conduct the necessary environmental review and to explore the increased use of ocean air prior to its reinstitution and to explore the increased use of ocean air space. Other directions essential for a more environmentally responsible policy are 1) a change in FAA policy regarding the environmental assessment of changes in air traffic patterns above 3,000 feet in altitude and 2) acceleration of the retirement of stage 2 aircraft to match the curtailment that Europe is instituting this year.[9]

Respectfully submitted,

Susan Staples

Susan Staples
U.F.O. Noise

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9. John Wesler, Wyle Research Report,"Effects of the EECP on Noise over Northern New Jersey." Other recommendations from the Wyle Report are 3) relocation of electronic aids for less intrusive routing of aircraft approaches and departures for New York metropolitan area and 4)assignment of only Stage 3 aircraft to more noise-sensitive tracts.

Seattle City Council

September 20, 1990

Paul Kraabel
President of the City Council
684-8807

George E. Benson
Chair
Transportation
Committee
684-8801

Cheryl Chow
Chair
Park and Public
Grounds
Committee
684-8804

Sue Donaldson
Chair
Land Use
Committee
684-8806

Jane Noland
Chair
Public Safety
and Environment
Committee
684-8803

Dolores Sibonga
Chair
Finance, Budget
and Management
Committee
684-8802

Sam Smith
Chair
Utilities Committee
684-8800

Jim Street
Chair
Growth Policies
and Regional Affairs
Committee
684-8808

Tom Weeks
Chair
Housing, Human
Services and
Education
Committee
684-8805

The Honorable James L. Oberstar
Chairmain, Aviation Subcommittee
House Public Works and Transportation
Committee
2251 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar:

Thank you for the invitation to speak before your Committee on the issue of Federal Aviation Noise Policy.

Enclosed is a copy of my statement for testimony to be given on Tuesday, September 25, 1990.

Sincerely,

Jim Street
Councilmember

JS:ab

An equal employment opportunity – affirmative action employer
Eleventh Floor, Municipal Building, Seattle, Washington 98104

Testimony to the Subcommittee on Aviation
House Public Works and Transportation Committee
on Federal Aviation Noise Policy

September 25, 1990

Submitted by: Jim Street
Councilmember, City of Seattle
Seattle, Washington

I am Jim Street, Councilmember, from the City of Seattle and Chairman of the City's Growth Policies and Regional Affairs Committee. The Growth Policies and regional Affairs Committee has recently had the responsibility of addressing a number of issues relating to the operation of our major international airport - SeaTac and the impact of the airport's operations on the citizens of our city. For the past year, one of the biggest issues has been the noise problem associated with rerouting of airplanes in and out of SeaTac. It has also been a substantial problem for the entire Puget Sound region, of which Seattle is a major part. Therefore, I appreciate the opportunity to address this Committee on our experiences, our problems and some of our solutions relating to the aircraft noise and the implications our experiences might have for the federal aviation noise policy.

Mr. Chairman, I applaud your efforts and the leadership you are taking to address the problems of aviation noise. It is certainly a growing issue across our entire country. There now exist organizations of local officials whose sole

purpose is to address problems associated with aviation noise at a national level. Some years ago, this didn't exist. We now have policies adopted by the National League of Cities that call for national action on aviation noise.

In my remarks, I would like to discuss three specific areas:

- o Seattle's recent experience
- o Our local solution
- o Recommendations for a federal aviation noise policy

Seattle's Experience

Last year the Federal Aviation Administration announced massive changes in the flight patterns to Seattle-Tacoma International Airport. These changes rerouted arrivals and departures over the central corridor of Seattle over North Seattle from Puget Sound, and our residential communities east of Seattle. These changes were designed to increase SeaTac runway capacity by 42 percent for instrument landings and to move more aircraft more quickly. It now brings two streams of arriving jets in at one time. This rerouting put more aircraft over more people per day than all the commercial flights at any other northwest airport. The rerouting has caused a massive increase in jet noise levels over the most densely populated residential areas of the United States north of San Francisco and west of Minneapolis. This area covers hospitals, colleges and universities, closely packed apartments and condominiums.

As you can imagine, the public outcry against the proposed rerouting of the FAA was loud and has resulted in a citizen's lawsuit brought by 28 community councils.

In Seattle, the airport is aligned so that flights are directed over the most populated area. As a result, 415,000 people in the northern part of the city and its close-in northern suburbs and another 350,000 on the east side of Lake Washington were effected. We have a unique situation because our airport is aimed directly at our population center.

I've seen flight track maps from SeaTac on which every flight (in a given period of time) is represented by a line. The lines completely obliterate the northern half of the City. Each of those lines traces a path of irritation, interrupted conversations, and disrupted sleep. (A map of these paths is attached for your information.) Although the people living at a distance from the airport are not subjected to the peak noise levels of each event that occur at the ends of the runways in the LDN 65 contour, the duration of each event is longer because at altitude, the aircraft passes through the range of hearing more slowly.

Noise impacts are not limited to the immediate proximity of the airport, the Part 150 area or the 65 LDN contour. Noise complaints and the disruption of daily life occur in widespread areas at a considerable distance from the airport.

We need a better process for evaluating the impacts of aircraft noise and the changes in flight patterns. Our experience in Seattle when the FAA changed the approach patterns this spring was discouraging. The environmental assessment that was prepared was extremely limited; in fact, it was essentially a rehash of a comparison of the operational characteristics of 13 different means of routing aircraft. Hardly the kind or analysis to give the public confidence.

We need a process that requires environmental -- noise and air quality -- analysis and incorporates noise and community impacts into the FAA decision making process. As provided for in HR4818 and HR1496, the FAA should be required to prepare an EIS on aircraft flight path changes below either the 15,000 or the 19,000 foot ceiling. The area of the City of Seattle and the region from which we get complaints, clearly indicates the aircraft at elevations greater than 3,000 feet create noise impacts. Requiring an evaluation of noise impacts of flight path changes makes sense. (Attached is a copy of the City of Seattle's response to the FAA's environmental assessment.)

The FAA has historically considered safety and economics in its decisions. I do not suggest that we sacrifice safety or disregard economics. We need to include the human cost. The time has come to add the environment and public health to the calculus. On the economic side, air travel needs to reflect the true cost and those costs include the noise impact on the nontraveling public.

The public outcry was so great that our Congressional delegation especially with the help of Congressman Miller, was able to get the FAA to hold off on this rerouting until a local mediation process sponsored by the Port of Seattle (who operates our airport) concluded its process. It is fair to say, however, that the mediation process had little or no effect on the rerouting decision because current federal law does not give sufficient consideration to noise impacts in rerouting. In general, our region's ability to successfully negotiate a noise reduction agreement was negatively affected by the posture of the FAA and the policies it is required by federal law to apply.

Local Mediation Agreement

Our solution was to adopt a "noise budget" and nighttime restrictions for the the SeaTac airport. This was an extremely difficult process. The overall package that was finally adopted will result in substantial net noise reduction over time. In addition to the noise budget, it includes key features for reduction of nighttime noise and use of nighttime flight corridors, monitoring and tracking systems, single-event noise remediation, and a noise abatement committee.

A mediation committee representing the Port of Seattle (airport operator), the airlines, the FAA, a geographic distribution of citizens agreed to a package of noise reduction strategies that will reduce aircraft noise by 50 percent by the year 2000.

There are others at these hearings who will tell you more about the noise budget and the mediation argument.

Let me say only that it is a delicate volunteer local solution. We are not anxious to see it jeopardized by federal preemption which ignores the true costs of noise and which fails to be sensitive to unique local circumstances.

Recommendations

Aviation noise is a growing issue. Air traffic is up; forecasts, at least for the Seattle area, show significant expected growth. Seattle, and understandably other areas, are looking at overall airport capacity and considering options for capacity increases at existing airports, secondary airports, or completely new regional airports as Denver did. We need to consider how handling of the aircraft noise issue today will effect our siting and expansion decisions

tomorrow. Those decisions will be facilitated by how reasonable and responsive we are today.

Noise can no longer be ignored. It is a significant environmental problem and we must begin to address it as we have addressed other environmental problems. To ignore it will only secure the degradation of a quality of life for many of our citizens and for ourselves and our children.

So, as you consider solutions for the growing aircraft noise problems today, I ask that you take the following into consideration.

- Maintain the integrity of local solutions such as Seattle's mediated agreement on a noise budget for our airport. We ask that any future legislation not jeopardize this agreement. New legislation should allow local solutions in place to be grandfathered in or exempted from an degradation of the noise reduction restrictions already in place for their areas. Any new federal legislation must take into account the unique features of the different areas - such as Seattle's - where the airport is aimed at our major population area.

- The human cost associated with the impacts of air travel need to be elevated on a par with commercial considerations.

- Quality of life is very important to our citizens - there is established national policy on the environment. That policy should be applied when we deal with airport noise and its effects.

  An important step in that direction would be the legislation Mr. Miller of my city has introduced - The Aircraft Noise Abatement Policy Act of 1990

(HR4818). This legislation would require aircraft noise concerns at a level equal to capacity and efficiency. Safety would still remain the number one priority. The FAA would have to consider the noise impact on communities when considering air routing changes for the purposes of mitigating delays and conjestion. This legislation would require an EIS whenever a routing change is made at or below 15,000 feet. Under present policy FAA only considers the environmental impact of routing changes under 3000 feet. The rational behind 15,000 feet that most air noise complaints emanate from within a 30-mile circle drawn around an airport - thirty miles out departing aircraft average 15,000 feet.

The Aircraft Noise Policy Act of 1990 also calls for the phase out of Stage II aircraft on a national level. This is very important. In order to effectively manage capacity of our national airport system, we must agree upon a Stage II fleet phase out on a national basis.

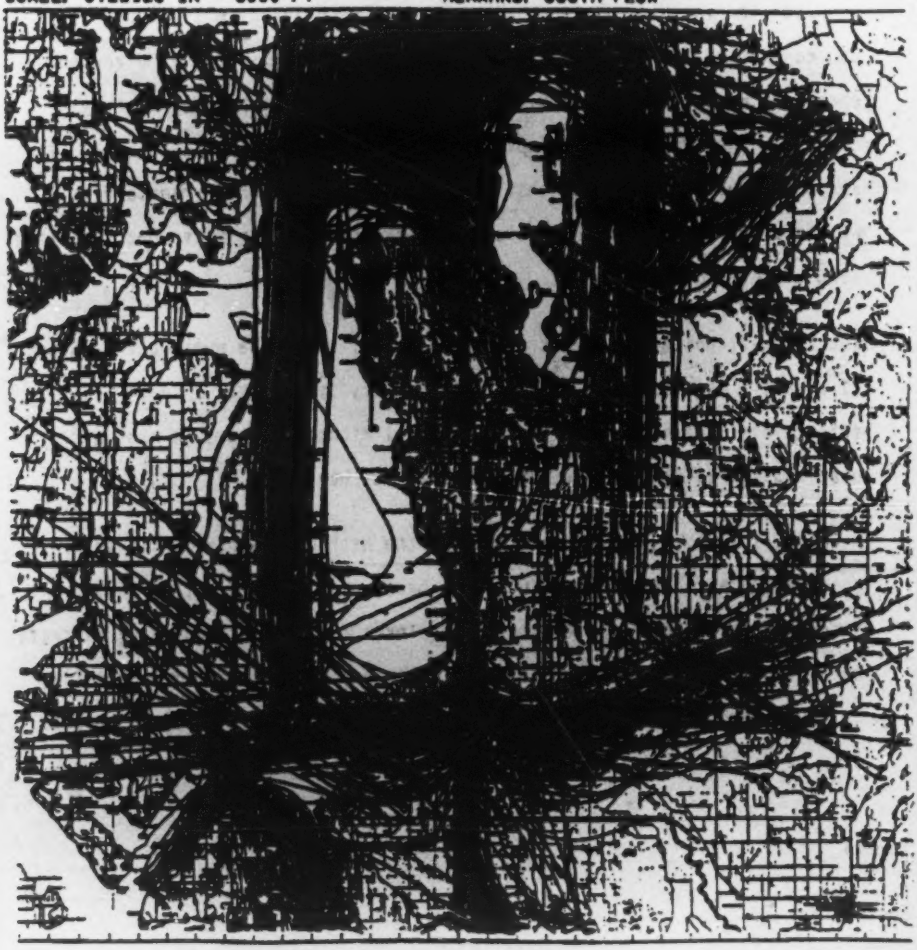
o Finally, I would call to your attention the National League of Cities' policies on aircraft noise. They have been passed by the 10,000-member city organization. They include support for local regulations regarding aircraft noise reduction, enforcement of noise policies, and support for incentives to speed reshiftting and replacement by quieter aircraft. I have included a copy of other policies for the record with my testimony.

11-544

Enclosures: 3

PORT OF SEATTLE FLIGHT TRACK SAMPLE

AIRPORT: SEA 05/14/90 05:00 - 22:00 ARRIVALS / DEPARTURES
ID: ALL FLIGHTS
A/C: JETS
SCALE: 0.28125 IN = 6000 FT REMARKS: SOUTH FLOW



Sea-Tac jet route battle goes to court

28 community groups take on the FAA

United Press International

Twenty-eight Seattle community groups asked a federal court yesterday to overturn the new patterns for flights in and out of Seattle-Tacoma International Airport.

The coalition says the "Four-Post" air-traffic plan, implemented April 2 by the Federal Aviation Administration, rerouted noisy jets over some of Seattle's most densely populated areas.

The petition to the 9th Circuit Court of Appeals contends that imposing the new routes was "unreasonable and contrary" to the requirements of the National Environmental Policy Act.

The act requires a detailed environmental impact statement for all "major federal actions significantly affecting the quality of the human environment . . ."

The FAA claimed that the old plan, which directed planes over Elliott Bay, caused delays. The new one, it said, would allow the arrival of 10 more aircraft every hour at Sea-Tac's two runways.

The FAA declared the change had no significant environmental impact. It based its finding on an environmental assessment that the community groups contend failed to provide enough evidence or analysis to support the change.

The petition argues that the assessment failed to present any measurement of noise caused by the change. The old plan had been developed in response to public concern about aircraft noise.

In 1983, the Sea-Tac Noise Mediation Committee, with representatives of the FAA, airlines and affected communities, was formed to propose alternatives to reduce jet noise. But before the committee could act, the FAA unilaterally discarded the old flight pattern and implemented its Four-Post plan.

The community groups note in court papers that the FAA's environmental assessment included only three pages on noise for 13 alternatives proposed.

In contrast, before the plan was implemented, the FAA received more than 1,000 pages of public comment and petitions decrying the inadequacies of the draft environmental assessment.

Comments from the cities of Seattle, Kirkland, Bellevue and Mercer Island and King County all criticized the FAA for changing flight tracks and ignoring the noise mediation committee.

Peter Eglick, a Seattle attorney representing the coalition, said the group would soon file a request for a stay to halt the Four-Post plan until the court rules. "You are always cautious, but given how egregious and superficial these analyses were, I think the chances are pretty good," he said.

"SeaTac jet route battle goes to court," Seattle Post Intelligencer, Tuesday, 21 August 1990, p. B2.

Your City, Seattle

Executive Department — Office for Long-range Planning

Richard Yukubousky Director
Norman B. Rice Mayor

January 24, 1990

Richard E. Prang, Manager
System Management Branch
U.S. Department of Transportation
Federal Aviation Administration
17900 Pacific Highway South, C-68966
Seattle, Washington 98168

Re: Review of Draft Environmental Assessment for Proposed Changes to Air Traffic Arrival and Departure Routes at Seattle-Tacoma International Airport, December, 1989

Dear Mr. Prang:

The City of Seattle's objective is a net reduction of the noise impacts experienced by its citizens and the citizens of the region as a result of aircraft operations to and from Seattle-Tacoma International Airport.

The City of Seattle believes the mediation process offers the best course for achieving tangible net aircraft noise reduction. The mediation process is likely to be successful in achieving meaningful results only if all parties remain at the table and mediate in good faith. The results of the mediation process must have certainty, be comprehended by the public and be enforceable. The mediated parameters must achieve desirable results.

The "Draft Environmental Assessment for the Proposed Changes in Air Traffic Arrival and Departure Routes" raises questions about the reliance that Seattle has placed on the mediation process. The lack of specificity in the Draft Environmental Assessment makes it difficult to assess the immediate impacts and completely obscures the long-term impacts of the proposed action -- the Four Post Plan. The City's perception that the Federal Aviation Administration is acting in good faith in the mediation process and openly with the citizens of the region depends, in part, on the clarity and comprehensiveness of the environmental review of your proposed action, alternative actions and mitigation measures.

As of this date, the City of Seattle seeks:

1. completion of the mediation process in an expeditious fashion;

2. mediated parameters which result in a net noise reduction;

3. restraint in implementation of any change in flight paths pending successful conclusion of the mediation process; and

4. a thorough and complete environmental review which is responsive to the comments detailed in this letter.

Unless the mediation process produces substantial and satisfactory mitigation which reduces long-term impacts, an Environmental Impact statement will be required to fully analyze the impacts.

Our review of the Draft Environmental Assessment for Proposed Changes to Air Traffic Arrival and Departure Routes at Seattle-Tacoma International Airport, December, 1989, identified numerous deficiencies or inadequacies.

Failure to Meet the Standard for an Environmental Assessment

The FAA's Environmental Assessment is essentially a comparison of the operational characteristics of 13 different means of rerouting aircraft approaches called "procedural changes." The procedural changes are evaluated primarily in terms of efficiency. Efficiency is characterized as reduction and simplification in the workload of FAA control personnel, maximum use of navigable airspace, increased capacity, and safety. The environmental consequences are confined to generalized statements about aircraft fuel consumption and noise above the LDN 65 level. It states there are no data on air quality impacts. The Environmental Assessment fails to meet the minimum standards under 40 CFR § 1501 and 1508.

Precedent for an EIS

FAA prepared a DEIS (and supplement) to address two non-project actions as the operator of the Washington, D.C. Metropolitan Airports. The first was the existing operation; the second was the proposed policy for the future operation of the airports. (The EIS on the ongoing operations of the airports was required by a 1976 court order by the U.S. District Court for the Eastern District of Virginia.) The thoroughness and completeness of the EIS make assessment of the environmental impacts possible in a way that the Environmental Assessment does not. The situations appear to be similar and a more thorough analysis is warranted for Sea-Tac.

Incremental Actions

The proposed action in the Four Post Plan is one of a series of interrelated actions or decisions which may have an adverse effect on the environment. Other related actions include results of the mediation process, noise reduction or management strategies, scheduling decisions by the airlines, airport management and operational decisions by the Port of Seattle on the allocation and use of airport facilities, capital improvements of Sea-Tac, including the proposed taxiway conversion, and procedures and resource decisions by the FAA for the Approach Control Facility (TRACON) and Seattle Air Route Traffic Control Center (ARTCC). The environmental effects of these actions should be evaluated together. Environmental effects related to Sea-Tac should be linked to capacity and operations of other airports in the region including King County International, Paine Field, McChord, Renton, Auburn, Bremerton, and the Whidbey Island Naval Air Station.

Airport Capacity

The Environmental Assessment is directed to capacity increases at Sea-Tac. The Environmental Assessment does not provide a baseline for comparison of proposed capacity increases with capacity used in previous environmental analysis and documentation. What (hourly, peak hour or period, daily, and 7:00 a.m. to 10:00 p.m. period) capacity estimates or forecasts have been used in the past. What net change in aircraft operations from past estimates and forecasts does the proposed action make possible?

The Environmental Assessment states that the preferred alternative provides for as many as 56-60 south flow aircraft arrivals per hour, an increase from 42 per hour at the current time (pp. 1 and 1). The range of the increase is from 33 to 43 percent increase in south flow operations. There will be an equal increase in arrivals and departures. South flow operations constitute 60 percent of operations (p. 6). Therefore, on an annual basis, the preferred alternative would increase Sea-Tac operations from 20 to 26 percent during peak periods. In the future, peak periods can reasonably be expected to expand in duration. The 43 percent increase in peak capacity and the 26 percent increase in annual operations are of an order of significance similar to adding an additional runway, and should be treated equivalently under NEPA.

The Environmental Assessment focuses discussion on the increase in south flow arrivals. North flow operations are discussed only superficially. There would have to be an equal increase in departures which is not discussed.

Secondary Impacts

The Environmental Assessment does not quantify or assess any of the primary or secondary impacts of these increased operations. There is no assessment of the increased traffic for passengers or additional airport personnel trying to reach the airport. The impact could be substantial. For example, a peak air travel hour estimate could be made by multiplying the 18 new arrivals per hour (plus an equal number of departures) by average plane capacity plus crew changes, subtracting the in-airport transfers, and accounting for the average vehicle occupancy for arriving and departing passengers, and adding additional trips by service personnel. Unfortunately, the Environmental Assessment provides none of the information besides new aircraft arrivals. The Assessment does not include a traffic analysis nor does it provide information to do a traffic analysis.

Daily peak periods in airline travel are not described (beyond the midday peaks caused by arrival and departure "banks"). Morning and evening air travel peaks may coincide with peak commuter traffic, further compounding the secondary vehicular traffic impacts resulting from the increase in airport capacity. The Environmental Assessment is silent and contains insufficient data for analysis.

There is no assessment of the ground related impacts of the increased operations. The assessment of air quality does not consider the effect of additional operations directly or indirectly on air quality. It is confined to some general characteristics of fuel consumption based on types of operation (pp. 60-61). There is no information on which to base secondary air quality

impacts from sources like vehicular traffic. There are no measurements and no data points. There is no assessment of the secondary impacts of any of the alternatives. There is no evaluation of the cumulative effect of primary and secondary impacts of the proposed action.

Air Quality

The Environmental Assessment is devoid of any analysis of the air quality impacts of the proposed action. Air quality is included under the section which considers energy consumption. It simply states "there is no quantative data available." The section consists of some general characteristics of fuel consumption based on types of operation (pp. 60-61). There is no listing of the compounds and quantities which will be emitted to the atmosphere from the increased operations or net changes resulting from modified operations. By comparison, the DEIS prepared for the Ferry County, Washington Airport, prepared by the FAA in 1974 with an average of three operations a day, includes estimates per operation and daily total pollutants for each of four compounds -- CO, hydrocarbons, NOx, and particulates. The Washington, D.C. Metropolitan Airport's 1980 DEIS and supplement contain extensive air quality analysis, which approximate what is minimally acceptable. The Environmental Assessment includes no measurements and no baseline data from which to assess changes or impacts. There is no information on the emissions of aircraft, or the differences in emissions with type of aircraft or engines, payload, or operational procedures. The Puget Sound Air Pollution Control Agency is not listed among those contacted by the FAA in preparation of the Environmental Assessment.

Impact on Surrounding Area

The Environmental Assessment contains only a generic table (p. 61a-61b) of compatibility of average sound levels (LDN) with types of land uses. There is no application of any noise standard to particular uses, and consideration of impacts of sound levels below LDN 65 are completely absent.

Sensitive Receptors

Sensitive noise receptors, or noise sensitive areas, are not identified; consequently, the impacts of the proposed action on sensitive receptors are omitted from the Environmental Assessment.

Historic Sites

The Environmental Assessment does not consider the effect of the proposed action on properties protected under Section 4(f) of the Transportation Act, or Section 106(b) of the Historic Preservation Act.

LDN 65 Noise Contour

The Environmental Assessment discounts any noise or changes in noise outside of the LDN 65 noise contour. The measurement system averages noise which diminishes the effects of periodic noise such as aircraft flights. The L10 65 (noisiest 10 minutes) standard would more accurately show impact.

Noise does affect persons outside the LDN 65 zone. The use of LDN 65 standard inappropriately narrows the scope of the Environmental Assessment. By focusing on the LDN 65, the Environmental Assessment does not address areas where the changes in noise levels (both increases and decreases) will occur. These areas are largely outside of the LDN 65 contour. The federal procedures, as applied by the FAA, do not recognize the impact of noise on people's lives.

3,000-Foot Ceiling

The Environmental Assessment does not consider noise which occurs more than 3,000 feet above the land surface. The nature of noise reaching receptors from aircraft in flight, when landing and taking off, does not abruptly or perceptibly change as an aircraft passes through 3,000 feet. Aircraft gaining elevation under power generate noise levels in excess of those in a landing approach. The use of the 3,000-foot standard is arbitrary in that it does not account for the operation, payload, type of aircraft, or type of engine.

Impact on King County International Airport

The Environmental Assessment does not consider the effect of the proposed action on aircraft operations or safety at King County International Airport, even though operations of both airports occupy the same airspace. Consequently, the Environmental Assessment does not consider the secondary noise or other impacts which may be caused by diversions or aborted operations caused by airspace conflicts. Similar evaluation concerns seaplanes operating out of Lake Union and other airports in the region.

Exposure to Noise

There is no calculation of the exposure to noise as a function of population and employee locations and densities or the duration of noise events over particular sites or areas. The "Time Above" (TA) noise values have been used by the FAA in other analyses, i.e., Washington, D.C. Airports, as have NEF values, which assign a larger night time weighting to aircraft noise.

There is no analysis or summary of existing sources of information or research on the impacts of noise on the public or on individuals.

Community Degradation

Noise adversely affects property values and, eventually, community character. The influence can affect a wide area. The Environmental Assessment does not acknowledge the impacts and their effects on the long-term viability of impacted areas. Public costs to sustain affected communities are not considered.

Aircraft Noise Sources

There is no information on particular aircraft types in the proposed action or for current operations. Noise characteristics by type cannot be evaluated by the public.

Safety

Safety issues discussed in the Environmental Assessment are stated as congestion in the south flow approach, crossing flight paths in central Oregon and in Eastern Washington/Idaho and switch-overs from one approach procedure to another. Safety issues are presented as judgments without quantification or backup analysis. Risks are not addressed. The increased concentration of flights over densely populated areas as a result of the Four Post Plan is not addressed.

Aircraft Scheduling

Airline scheduling was not explored as an alternative, although the peak demands were acknowledged to be driven by airline scheduling of midday arrival and departure "banks." Scheduling has not been used to minimize delays. Scheduling decisions have exacerbated capacity constraints. FAA has the power to regulate schedules or to request voluntary agreements from the airlines. FAA does not believe Sea-Tac is a "high density" airport or that changes in airline scheduling would relieve congestion (p. 15). This conclusion needs to be reevaluated or substantiated, particularly when combined air space rather than just Sea-Tac and King County International Airport operations is considered.

Mitigation Measures

The Environmental Assessment does not consider any mitigation measures. Mitigation measures should be incorporated in one or more alternatives under consideration in the Environmental Assessment. Possible mitigation measures could include noise budgets for Sea-Tac and/or individual airlines, limitations of types of aircraft or incentives for use of quieter aircraft, noise sensitive landing fees or other economic incentives for noise reduction, noise reduction operational practices and reduction of "flying dirty," curfews for particular flight paths, night time restrictions, imposition of the Four Post plan during limited time periods, or special flight paths for stage II aircraft. The mitigation measures proposed in the Mestre Grieve Preliminary Report should be evaluated.

Noise Monitoring

Independent noise monitoring should be conducted throughout the region to provide a data base, measure noise levels including those below LDN 65, and evaluate flight paths and noise mitigation measures. Monitoring and/or analysis should use more refined standards than LDN.

Comparison with Mestre Grieve Preliminary Report

The FAA Environmental Assessment contains one map (p. 61c) which shows "1988 Noise Contours" of LDN 65 or greater -- presumably an annual average. The Mestre Grieve Report shows current LDN 65 contours comparable to those shown in the FAA's Environmental Assessment. The Mestre Grieve Report shows annual average and north and south flow noise contours for both the current conditions and the Four Post proposal. There is no discernible difference in the location

of the LDN 65 noise contour between the current conditions and the proposed action. There are substantial differences in the location of noise contours for lower levels of noise. The difference in the location of the contours for north and south flow (extending further in the direction of the flow) in comparison with the annual average contour begins to show the leveling effect of averaged noise data.

The Mestre Grieve Report enumerates 52 measurement locations and provides detailed data on 13 sites. LDN noise levels are shown for a daily average and by flow direction. Time Above 55, 65 and 85 dBA is shown in minutes. Single-event data is recorded for current procedures in energy average SEL and average peak sound level. The number of aircraft passing over site under current and proposed conditions is reported.

Deficiencies in the Environmental Assessment are apparent when compared with the Mestre Grieve Report. These data should be incorporated and analyzed in an Environmental Assessment.

The Mestre Grieve Report proposes six modifications to the FAA Four Post plan that attempt to combine the needs of the FAA and the noise mitigation desires of the surrounding communities.

We appreciate the opportunity to review the Environmental Assessment. I, or a member of my staff, would be happy to meet with you and go over our comments.

Sincerely,

Richard Yukubousky

Richard Yukubousky, Director
Office for Long-range Planning

RY:hss
322-694

cc: Patricia Davis, Chair, Port of Seattle Commission
Andrea Beatty-Riniker, Port of Seattle
King County Executive, Tim Hill
Anita Frankel, Air Pollution Control Officer
Temple Johnson, Federal Aviation Administration
Jim Street, Seattle City Council

water rights are quantified and all claims settled. We urge that this be done as quickly as possible.

2.06 Infrastructure

1. Federal Infrastructure Program

In order to rectify the problems of infrastructure deterioration and obsolescence as well as satisfy infrastructure needs resulting from population and economic growth, Congress should enact a comprehensive infrastructure assistance program. Such a program should include the following elements:

First, in order to provide assistance to states and local governments suffering from fiscal stress, federal funding for existing infrastructure-related grant programs should be increased. Additionally, a new multi-year revolving loan program should be created to provide supplemental funding to the existing grant programs. Under the loan program, low interest or interest-free federal funds should be distributed to the states on the basis of population for the purpose of establishing revolving loan programs within each state. States should distribute interest-free loans to localities to fund eligible infrastructure projects and should be required to repay the federal loan within a certain specified time period. Revolving loan funds should be used for the repair, rehabilitation, replacement, reconstruction & construction of eligible facilities. States and localities should have maximum flexibility in determining which types of local public facilities should be funded; however, they should be required to demonstrate that their use of federal infrastructure loan funds satisfies such broad objectives as protection of public health and safety, provision of essential public services, and fulfillment of local priority needs. The federal loan program should be large enough, at a minimum, to maintain the ratio between federal and non-federal financial assistance for capital investments made over the last ten to fifteen years.

Second, in order to maximize the use of existing federal funds for infrastructure investment and extend the life of existing federally-aided infrastructure, the federal government should evaluate current programs and make such changes as necessary to promote more cost effective public investment (such as increasing aviation and waterway user fees and permitting the use of wastewater treatment construction grant funds for sewer system rehabilitation and correction of spillover from combined sanitary sewer/storm drainage systems).

Third, in order to focus public attention on the use of federal funds for public infrastructure investment and to improve public decision-making with respect to such investments, a federal capital investment budget should be submitted annually by the president.

2. Infrastructure and Tax Reform

A significant amount of infrastructure construction, reconstruction and repair is financed through tax expenditures allowed under the Internal Revenue Code. In order to ensure that tax exempt financing continues to be available for infrastructure purposes, Congress should exempt from taxation bonds proceeds which are used to finance particular types of public purpose infrastructure facilities. The exemption should include: wastewater and stormwater treatment facilities; solid and hazardous waste facilities; drinking water facilities; resource recovery, cogeneration and district heating facilities; roads and bridges; airports; docks and wharves; mass transportation commuting facilities; hydroelectric powerplant facilities; and pollution control facilities.

Congress should not prohibit the advance refunding of tax exempt bonds and should not eliminate the deduction for interest paid by financial institutions carrying tax exempt bonds. Both provisions have helped reduce overall project costs and have increased the attractiveness of the public purpose tax exempt bond market to investors.

In order to encourage privatization of infrastructure facilities, Congress should allow private, for-profit companies either to use the accelerated cost recovery system for depreciating capital assets or to use the investment tax credit for infrastructure facilities financed with taxable bonds or for facilities leased from municipalities.

2.07 Noise Control

A. Problem

Noise is adversely affecting the quality of urban life and is a threat to the public health, safety, and welfare. Cities have been in the lead in controlling noise pollution and should continue their initiatives.

B. Goals

1. Federal Regulatory Role

The federal government should concentrate regulatory activities on establishing noise limits for newly manufactured major surface and air transportation vehicles used in interstate commerce, e.g., airplanes, buses, trains and trucks.

2. Building Local Program Capacity

There should be a cooperative federal-local program to build local noise program capabilities.

C. Policies

1. Local Regulatory Responsibility

The federal government should permit state and local governments to establish more stringent noise standards, except for major surface transportation vehicles used exclusively in interstate commerce. Cities must be free to achieve locally-determined environmental

noise standards for the protection of public health and safety through licensing, regulation, comprehensive zoning and land-use control, or restriction of the sale or use, the operation or the movement of noise sources.

Airport Noise Policies

a. Federal Regulations:
EPA and FAA should require state-of-the-art noise emission controls on all aircraft serving the United States whether foreign or domestic. The following specific policies should be pursued:

(1) Enforce the Fleet Noise Rule

FAR Part 91, the Fleet Noise Rule, as amended by the Aircraft Safety and Noise Reduction Act should not be modified to permit extensions or exceptions to the retrofit/replacement schedules of the rule. Further, the Secretary of Transportation should enforce strict compliance by the airlines with the retrofit/replacement schedules of FAR Part 91.

(2) Enforce Aircraft Noise Emission Standards

FAR Part 36, the noise emission standards for civil and commercial aircraft, should not be modified to relax the standards. The FAA should enforce strict compliance with the noise emission standards of FAR Part 36.

(3) Phase Out Production of Noisy Aircraft

A deadline should be established for terminating the production of previously certified aircraft which do not meet the noise emission standards of FAR Part 36, Stage 3.

New production aircraft of previously certified models which can be minimally redesigned to meet FAR Part 36 Stage 3 should be directed to comply immediately.

(4) Strengthen Aircraft Noise Emission Standards

FAR Part 36 Stage 3 should be amended to further reduce the noise emissions permitted from both civil and commercial aircraft by levels and schedule consistent with state-of-the-art in aircraft noise abatement technology.

(5) Examine Phase Out of Stage 2 Aircraft

The FAA should study the economic feasibility of a timetable for phasing out over the next decade all commercial aircraft over 75,000 pounds which do not meet the noise emission standards of FAR Part 36, Stage 3.

b. Local Government Authority

Local governments and airport operators must have authority to impose more stringent or additional requirements on aircraft operation to achieve immediate relief from unacceptable environmental noise levels, including differential fees based upon aircraft noise, and/or fines for violation of state and local noise standards.

c. Federal Funding

(1) Funding for Quieter Aircraft

Funds should be made available to the airlines to speed the retrofitting and/or replacement of existing aircraft to meet the FAR Part 36 Stage 3 standard. These funds should come initially from the Airport and Airway Development Trust Fund, which should be replenished from Trust Fund revenues, or from surcharges on airline tickets and air freight way bills.

(2) Funding for Airport Operators and Local Governments

Money from the Trust Fund for surcharges also should be provided to local governments, airport operators, and homeowners for relocation and redevelopment of land adjoining airports, sound barriers, soundproofing, and other noise controls at or near airports.

A federal program to support advance acquisition of property schedules to be incorporated in airport development under comprehensive airport plans must be initiated. This program must support acquisition of property outside airport property boundaries to minimize aircraft noise impact in existence as of the date of implementation.

d. Federal Responsibility for Damages

The federal government, because it has significant responsibility for control of aircraft noise and aircraft, should accept full responsibility for payment of damage claims resulting from aircraft pollution.

e. Supersonic Transport (SST) Operations and Noise

(1) Preventing Environmental Degradation

The potential environmental degradation, because of noise and sonic boom resulting from the operation of supersonic transport planes, is a matter of grave concern. The federal government should establish that environmental degradation will not occur before permitting operations and overflights by supersonic transport aircraft.

(2) Preserving Local Option on Service

The right of local airport operators and gov-

ernments to determine whether supersonic (SST) operations should be permitted at their facilities must be preserved.

f. Military Operations and Noise

Military and air national guard aircraft and operations located in urban areas should be compatible with local noise plans. When economically feasible, operations that are unavoidably noisy should be located away from metropolitan areas. In the usual case where it is not possible to transfer military and air national guard operations from an urban airport, the federal government should accept full responsibility for payment of damage.

g. "Fly Quiet" Campaign

A "Fly Quiet" campaign should be established to provide incentives to air carriers to retrofit and/or replace existing aircraft and meet the 1977 FAR part 36 standards. A "Fly Quiet" campaign should involve the following actions:

(1) The federal government should make arrangements to fly only aircraft which comply with FAR part 36 standards.

(2) GSA plans to negotiate service contracts with air carriers to obtain discount rates for the federal government. GSA should stipulate as part of the contractual arrangement that it will fly only aircraft which comply with FAR part 36 standards.

(3) FAA regulations and/or legislation should be extended to require that all currently manufactured aircraft use new jet enginetechnology.

3. Highway Noise Policies

a. Federal Responsibility

Highway and street traffic noise, especially that associated with freeways and interstate highways, is a major source of intolerable noise. Significant responsibility of control of highway noise lies with the federal government, and it must be exercised through a comprehensive federal program with the EPA as the lead agency for highway noise abatement efforts.

b. Noise Emission Standards

The EPA and DOT should establish noise emission standards for trucks, buses, automobiles and motorcycles. State and local governments must have the authority to establish more stringent standards, including fines for violation of state and local noise standards and ordinances.

c. Sound Barriers and Buffers

Further interstate construction and other federally-funded highway construction in urban areas should continue to include provision for sound barriers or buffer zones to be constructed as an integral part of the highway as required by local governments.

d. Federal Funding

Funds from the Highway Trust fund should continue to be made available to state and local governments to install noise barriers or buffer zones as required by local governments along existing urban interstate highways.

4. Railroad Noise Policies

a. Rail Equipment Standards

The EPA should establish minimum noise emission standards for railroad operating equipment.

b. Rail Yard Standards

The Environmental Protection Agency should allow cities to adopt local rail yard noise control standards which are stricter than federal standards in order to alleviate the problem of excessive noise emanating from fixed rail facilities.

5. Planning for Noise Abatement

The development of noise generators, such as airports, industrial parks, highways and sports centers, should be strictly controlled so as not to created undesirable environmental effects. When federal assistance is utilized for the development of airports, highways and other noise generators, the federal government should ensure that cities have the tools with which to evaluate the noise impact of those facilities. The federal government should develop and disseminate noise standards and criteria which could be used by cities in noise planning an abatement efforts.

6. Buy Quiet Program

Federal, state, and local governments and their contractors should, to the greatest extent practicable, use their purchasing power to ensure that new equipment and replacements bought for their use incorporate noise control features.

7. Federal Technical Assistance

A program of direct federal technical and financial assistance should be maintained to assist cities to establish and maintain local noise control programs and agencies, and to develop noise baseline data. Additional federal funds should be made available and targeted to severely noise-distressed cities to help them develop strategies to lessen noise impact.

2.08 Urban Environmental Design

A. Problem

Few federal programs recognize the importance of urban environmental design management—the process by which a city incorporates design considerations into all devel-

No more than 50 percent of the AIP funds should be allocated to primary airports. The minimum and maximum allocation to each primary airport should be increased, but no other changes should be made to the primary airport entitlement portion of the AIP.

Groundside improvement projects should be eligible for AIP funding under the formula grant program if Highway Trust Fund funding for such projects is inadequate. Terminal development projects should also be eligible for funding if the airport sponsor certifies that the terminal improvement is for safety and security reasons. Advanced funding of aviation projects should be allowed for work undertaken before an AIP grant is made if the Federal Aviation Administrator issues a letter of intent to fund the project and if the project is AIP-eligible.

The nation's largest airports should not be mandatorily or voluntarily removed or 'defederalized' from the national airport program. NLC believes that defederalization is blatantly inequitable since the smallest airports, which generate only a small share of revenues, would receive 100 percent of federal airport funds, while the largest airports, which contribute nearly 70 percent of the passenger ticket tax revenues, would receive no funds. Users of defederalized airports would be required to pay a double tax (a ticket tax and a passenger tax) without receiving any additional benefits in terms of level of service.

NLC strongly opposes proposals to restructure the airport grant program for small-and medium-sized airports into a state block grant program. Such a block grant program would impose an unnecessary layer of bureaucracy between federal and local governments and would enable states to establish their own airport project priorities without considering locally perceived priorities. Such an approach would foster state-by-state development of airport safety and operational standards, severely undermining the effectiveness of national airport standards. Local governments and airports sponsors, therefore, must continue to be directly responsible for airport planning and development.

2. *Airport Finance*

The user-generated Airport and Airway Trust Fund should continue to be used as the mechanism for financing airport development and improvements. In order to ensure that aviation user-fee revenues do not accumulate unspent in the Trust Fund and that aviation users benefit from the aviation-related taxes they pay, NLC urges federal government to: remove the Airport and Airway Trust Fund from the unified federal budget; spend any existing uncommitted surplus by increasing the authorization levels for each categorical program under the Airport and Airway Improvement Act; and establish trigger mechanisms which would automatically reduce spending or reduce the level of the aviation user fees if one or more categorical program falls below authorized levels.

3. *Airport Noise*

An increased portion of the discretionary AIP Airport Development Aid Program [illegible] to airport

fund noise abatement projects. This would facilitate the purchase of land parcels around airports to serve as buffers against airport noise and the implementation of other noise mitigation measures. The development and implementation of noise compatibility plans and programs should continue to be funded under the formula program.

The federal government must intensify its efforts to provide prompt relief to residents of cities located close to airports from unacceptable levels of aircraft noise and aircraft pollution. Additional noise policies are contained in Section 2.06 of the Energy, Environment and Natural Resources chapter.

4. *Airport Development*

In order to protect the public health and safety of surrounding communities, to enforce airport uses that are appropriate to the airport's capacity and to ensure that local transportation, environmental (including noise control)) and economic needs are met, local airport operators and local governments must have the authority to regulate airport use and must be involved in decisions relating to airport use and development. Therefore, NLC opposes attempts by the federal government to mandate expansion of federally aided airport facilities, or to otherwise limit the ability of local governments to continue to determine, with appropriate community involvement, the scope and type of airport facilities needed, or the type of airport use restrictions (including airport noise or airport access restrictions) imposed, in their particular location.

5. *Federal Role in Air Transportation*

The federal government should continue to provide, operate, and maintain all air navigation facilities required for safe aircraft operation.

6. *Helicopter Transportation*

Despite the mandate to plan for and promote a comprehensive multimodal transportation system, the federal government has all but ignored the helicopter as a mode of urban transport. The DOT should study helicopters as a mode of transport in the urban environment.

7. *Essential Air Service Program*

A balanced national air transportation policy must address the needs of all types of cities, including small cities. In order to ensure that small communities receive reliable, regularly scheduled air service, the federal government should reauthorize and extend the Essential Air Service (EAS) program. However, the program should be improved by restructuring it so that it provides a higher basic level of service to small communities, more flexible exit and entry from the program, more targeted subsidies to communities who are not otherwise close to an existing hub, protection from service interruptions, and incentives for the development of self-sufficient air traffic markets. Further, to ensure that the EAS program is funded from a stable and reliable source of revenue, the program should be funded out of the Airport and Airway Trust Fund rather than general funds.

Testimony
Jan 2

TESTIMONY CONCERNING H.B. 4818
BY
JEANETTE WILLIAMS
APPEARING ON BEHALF OF THE
SEATTLE COMMUNITY COUNCIL FEDERATION

FJ 269
SATT.

My name is Jeanette Williams, and I am here today in my capacity as co-chair of the Seattle Aircraft Noise Group, which is an affiliate of the Seattle Community Council Federation. The Aircraft Noise Group is a very broadly based coalition of neighborhood associations from in and around the Seattle metropolitan area.

copy I represented the citizens of Seattle for ~~many~~ 20 years as an elected member of the Seattle City Council, and ~~although~~ since I have left public office, ~~my concern for the city has certainly not diminished~~ I have become very active in the aircraft noise group coalition. ① ②

You know, Seattle has recently been "discovered" by the rest of the nation as one of the best places to live in the entire country. We keep being voted "most livable", and frankly, most Seattlites would rather that our secret didn't get out. But what is the secret to Seattle's livability? It's not just our beautiful natural environment; it's our people.

We have, I think, developed a rare spirit of cooperation in the Northwest; we try to get along, and compromise, instead of waging factional battles. Together we have created a city where

we spend more money on parks than on parking lots; where you can commute by ferry boat or bicycle; where there are more community councils than gangs; where people of all races and lifestyles feel comfortable. We have a good mayor, who happens to be black, though only ten percent of the population is black. We have some of the toughest state environmental protection laws in the nation, and many industries voluntarily go even further to protect our quality of life. In short, we have a great city, and we think it's worth fighting for.

But now, something has happened that is affecting every citizen in the city as well as in surrounding jurisdictions. You know, there are many kinds of pollution: air, water, ground . . . but noise pollution, though it won't poison you, is perhaps more intrusive than any of the others. If the water or air is polluted, you may not be able to tell just by tasting or breathing it. But noise pollution affects you right now, when it happens, for as long as it happens. And that is what is happening to Seattle. We are under siege. I have been driven here, as thousands of Seattlites have been driven to now join forces, by the Federal Aviation Administration's illegal implementation of new flight paths which go directly over Seattle. Our main airport, Seattle-Tacoma International, or Sea-Tac, as it's commonly known, is only twelve miles south of the city. This means that the jets are accelerating, and decelerating, which seems just as loud, directly over the city.

We thought we had this problem solved a long time ago. In the 1970s, the great Senator Warren Magnuson fostered the adoption of the Elliot Bay Noise Abatement Procedures, which took air traffic over the waters of Elliot Bay, which is next to Seattle. But now the FAA has decided that these routes over the water, which were agreed to by all parties, are not good enough.

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The public response to the changes has been phenomenal. Never in all my years of public service have I seen such united opposition in our citizenry. The Port of Seattle, which operates the airport, has received literally thousands of complaints. So has the FAA. We have had numerous reports of classrooms being disrupted, people being unable to sleep, and even of people who are now unable to use their own backyards because of the constant roar.

The people who live on hilltops in Seattle (and if you're not familiar with Seattle, we have a <u>lot</u> of hills) are especially affected. Most of our hospitals are on Capitol Hill or First Hill, which are directly in line with one flight track. Residents have moved away because of the noise, and apartment owners complain that potential tenants are deterred by the racket.

Seattle has always prided itself on its community activism. There are more than twenty-five neighborhood councils and organizations in Seattle, and they don't often all agree on one

issue. However, they have banded together in an unprecedented show of unity to protest these new flight paths. We are not taking this lying down; we are bringing suit against the FAA to stop this unnecessary degradation of our quality of life.

Our lawsuit was brought in the U.S. Court of Appeals for the Ninth Circuit by the Seattle Community Council Federation. The Federation was founded in 1946. It consists of twenty-eight neighborhood groups and community councils in the City of Seattle. The Federation's purpose is to unite Seattle community groups and organizations to take common action on problems facing our community.

We do most of our Federation work through affiliated committees. The Seattle Airport Noise Group is one of our most active and broadly based Affiliates. Many of the neighborhood organizations in the Aircraft Noise Group have not previously participated in the Federation but have been driven together by the effects of recent changes in the aircraft route structure over the City of Seattle. Many individuals who are working on this issue have never been involved with neighborhood work, but have been compelled to participate as a result the Federal Aviation Administration's recent actions. Many individuals and groups from outside the city limits are also joining us in our efforts to preserve our region's quality of life. The City of Tacoma, which shares Sea-Tac airport with Seattle, has decided to join us as a

friend of the court in our suit pending against the FAA, and we hope that other municipalities in the Puget Sound Basin will do so as well.

The aircraft noise problem is particularly troublesome to us because of the unwillingness of any government agency to take responsibility for the impact of aircraft noise on the neighborhoods of Seattle. Over the years, citizen representatives have attempted to contribute to the solution of the aircraft noise problem. The most recent incarnation of this effort is the Sea-Tac Noise Mediation Committee, formed in 1987. This committee includes representatives of the FAA, the Port of Seattle, the airlines, and affected communities. Its agenda was to resolve aircraft noise impacts in a manner which would be acceptable to all affected interests.

However, in April, 1990, before this committee could resolve the issue of flight track management, the FAA unilaterally changed the flight paths for most arriving and departing aircraft so that those planes now fly low over densely populated areas of Seattle and King County. The human environment in Seattle and surrounding areas has been profoundly disrupted and severely degraded by the unilateral action taken by the FAA in imposing the new flight paths over the city. The problem of aircraft noise has been gradually increasing over the years, and has now exploded with the implementation of the new flight paths. It shows no signs of

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letting up. Indeed, if the number of flights continues to increase as expected, it will undoubtedly grow much worse.

In spite of the obvious severity of the noise impacts caused by the new flight paths, the FAA did not even bother to prepare an Environmental Impact Statement as required by the National Environmental Policy Act. Instead of actually assessing environmental impacts, the FAA simply declared that no significant noise impacts would occur outside because all of the new flight patterns were outside of the preexisting 65 LDN noise contour. Seattle residents, community groups, and institutions have emphatically rejected the FAA's position, but have found the FAA to be impermeable to all methods of influence.

In adopting the new flight paths, the FAA violated NEPA, abandoned its responsibility to the noise mediation process, failed to provide a meaningful response to extensive public criticism of its draft environmental assessment, and has ignored the clear public outcry as indicated, for example, in the huge increase in noise complaints phoned in to the Port of Seattle's noise hotline. Seattle is not alone in its outcry. Cities from New Jersey to California are being increasingly subjected to intrusive aircraft noise, with absolutely no effective avenue to influence the unilateral actions of the FAA.

Clearly, the FAA needs a clear directive that it, like all

other government agencies, is subject to the requirements of NEPA in these types of situations. House Bill 4818 is clearly an important step in that direction. This bill, by requiring the FAA to prepare an EIS on Seattle air route changes and to consider aircraft noise abatement as one of its top priorities, will provide a much-needed avenue for input from communities affected by aircraft noise. Under this bill, the full-scale rebellion of citizens which we are experiencing in Seattle will be unnecessary, because the FAA will be explicitly required to consider the effects of aircraft noise on affected citizens. The Seattle Community Council Federation strongly supports this bill and urges its adoption. Thank you.

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FEDERAL AVIATION NOISE POLICY

SEPTEMBER 27, 1990

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:55 a.m. in room 2200, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. OBERSTAR. The Subcommittee on Aviation will come to order.

The Chair had an off-the-record parenthetical observation, having come just moments ago from the Democratic Whip meeting where the summiteers reported on negotiations over the budget, the economic summit, while some pieces of a package offered on both sides were discussed. There is nothing agreed upon yet, and negotiators will continue talking throughout the day, hoping to reach agreement.

If an agreement can be reached, then the House would vote on a narrative text of an understanding reached among the summiteers tomorrow morning, and then we'd come back in Monday and vote on the legislative text of an agreement that would spell out the agreement reached and concurred in, if concurred in. If such an agreement is not possible, then we would come back and vote on a short term CR tomorrow morning, send that through the House and to the Senate and to the White House. If vetoed, we would be reconvening Sunday morning in an attempt to forestall the shutdown of government.

That's about all anyone can say right now. I'm sorry for the delay, but I thought it was important to try to sit there and at least understand what faces us in the next 48 to 72 hours.

Our first witness this morning, the Honorable Raymond J. McGrath, our colleague from the State of New York, is unable to be here due to an unfortunate death in the family. We offer our very profound sympathies. His mother passed away, and the loss of a mother is always a painful tragedy.

Alleviating our distress, however, is our next witness, Mr. Kenneth M. Mead, Director of Transportation Issues, Resources, Community, and Economic Development Division for the U.S. General Accounting Office. Always a welcome witness, always a knowledgeable and informed, dispassionate and objective observer of the Federal scene, particularly in aviation matters, and one who has added immensely to our storehouse of knowledge.

Mr. Mead and your associates, please come forward.

We continue today, of course, our inquiry into aviation noise issues, the beginning step of a very long process that will take us well into the next Congress into this issue, but the result of which we expect to be the development of a national noise policy without which I think aviation cannot thrive and expand.

In our Tuesday hearing, we had some very graphic descriptions of what citizens think about noise, those who aren't in the cockpit or on the runway with acoustical headphones over their ears—some very graphic descriptions, such as, "The roar overhead has for us been an acoustic Chernobyl" or "This morning I woke up in hell under the flight path leading into New York airports." People are understandably upset about aircraft noise, and it shall be our business to try to find a means of alleviating, if not altogether dissipating, the noise.

Mr. Mead, help us by shedding some light on this subject from your perspective.

TESTIMONY OF KENNETH M. MEAD, DIRECTOR, TRANSPORTATION ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ALLEN LI, JACK WELLS, AND MAUREEN DRISCOLL

Mr. MEAD. Well, Mr. Chairman, I want to thank you for shedding some light on the deliberations of the Congress on where things might stand on Monday. As I came over here from GAO, the guidance given was to turn on the radio Sunday night, so I find your information much more enlightening—maybe even encouraging.

I'd like to introduce my colleagues at the table here. On my left is Allen Li, who has also appeared frequently before the committee. Allen directed our work on the East Coast plan and the West Coast plan, which, of course, I understand you heard about on the first day of your hearings on major configurations of air space there. On my right, Jack Wells and Maureen Driscoll of our Boston office, who directed our work on the economic impact of noise restrictions and what could be expected to occur with a stage 2 ban.

I have a very lengthy statement to submit for the record, and I will summarize that, Mr. Chairman, with your permission.

Mr. OBERSTAR. Of course, as always your statement will be included in full in the record, and we welcome your summary.

Mr. MEAD. Thank you. Our testimony today is a part of a series of reports and testimony dealing with aviation noise issues. It is based largely on a survey of 140 jet airports, which represent over 95 percent of all enplanements in the Nation. Our analysis of four studies of economic costs of noise restrictions and extensive interviews with airlines, airports, and aircraft industry officials—all of this was designed to assess economic impacts that noise restrictions will be having. We will also this morning be discussing the policy issues that need to be resolved in developing a national noise policy.

Overall, our review shows that in the absence of a national policy, airports will continue to implement a wide variety of locally imposed noise measures and that this will increase greatly. While

these measures are needed to reduce the costs which airport noise imposes on local communities, they also will place an increasingly heavy burden on the Nation's air transportation system. We think the time has come to adopt a policy that, among other matters, provides for a more orderly transition to stage 3. We think the findings of our survey, which I'll recount to you today, support that view.

We found that the number of airports requiring the use of quieter stage 3 aircraft will grow slowly until 1995 but will increase rapidly between 1995 and 2000. By the year 2000, our survey shows that 41 percent of the Nation's 29 largest airports will very likely have banned stage 2 aircraft altogether. The cost of delays and inefficient use of aircraft imposed on airlines by the uncoordinated adoption of local noise restrictions appear modest at the present time. However, we expect the proliferation of these restrictions after 1995 to cause those costs to grow rapidly.

The aircraft and airline industries believe they have the capacity to phase out stage 2 aircraft by the year 2000 but said they will need 10 years' notice to achieve that goal. GAO estimates the cost of a stage 2 ban by the year 2000 to be between $2 billion and $5 billion. I'd like to review these findings in somewhat more detail now.

First, on our expectation about local noise restrictions proliferating after 1995, our survey of 140 airports found only three airports now ban the use of stage 2 aircraft—Orange County, Long Beach and Burbank. However, by 2000, 34 additional airports are very likely to become all stage 3, including 12 of the 29 largest airports. Seventy-seven of the 140 airports are at least somewhat likely to ban stage 2 aircraft by 2000, including 20 of the 29 largest.

Second, these uncoordinated airport noise restrictions are likely to impose growing costs on the airlines. The independent and uncoordinated imposition of local noise restrictions is often characterized as a patchwork quilt style of regulation, but that style of regulation is affecting the efficient functioning of the National Transportation System by causing delays and the uneconomic use of aircraft. Night time noise curfews can increase delays of evening flights.

If the delayed flight uses the stage 2 aircraft that cannot operate after the curfew, it will have to be cancelled or redirected to an alternative airport. If the stage 3 aircraft is grounded by mechanical problems and the airline only has a back-up stage 2, the flight will have to be cancelled. Sixteen of the 140 airports already restrict the percentage of stage 2 aircraft that can be used at their airport or ban their use at night entirely.

Aircraft scheduling is sometimes inefficient because the limited number of stage 3 aircraft must be used at the airports that require them rather than where their size is more appropriate. For example, some airlines must use the 757 aircraft to meet noise restrictions when smaller 737 aircraft would be better suited to traffic levels in that market. Aircraft also require less thrust and generate less noise when they are less than fully loaded. Some noise restrictions actually require planes to be flown with less than a full load, and that limits their efficient use. For example, one carrier

flies the B-737-300 out of Orange County Airport in California with less than full loads to meet the noise restrictions there.

As I said before, the extent of these costs nationally at the present time seems moderate. Airlines could not quantify them for us, but these costs will almost certainly become substantially greater as the number of airports with noise restrictions increases, especially after 1995.

On a related point, airport noise restrictions can also cause dumping of noisy aircraft on airports that don't have restrictions. Twenty-three airports told us that dumping of noise on their airports have become a problem as a result of a restriction imposed at another airport. On the other hand, 24 airports told us they were experiencing lower levels of noise, suggesting that the requirement for quieter planes at one airport made the same planes available for use at another airport.

A third major finding is that a ban on stage 2 aircraft is feasible and that it will cost in the neighborhood of $2 billion to $5 billion. Air carriers can convert their fleets, Mr. Chairman, to stage 3 by replacing the old planes with new stage 3 aircraft or by retrofitting the stage 2 planes with hushkits or new engines. Airline officials told us that 10 years is the minimum lead time needed to accomplish a transition. Aircraft manufacturers as well as hushkit manufacturers told us they are capable of meeting the 10-year time frame.

There are four organizations that studied the cost of a stage 2 ban by the year 2000—FAA, American Airlines, AVMARK, and for the cargo industry a firm by the name of Leeper, Cambridge and Campbell. These studies reported a wide range of costs associated with the ban, very wide—$1.6 billion to $60 billion. The variations reflect differences in key assumptions concerning the useful life of an aircraft, the discount rate used, the growth rate, and the extent to which stage 3 standards can be met by means other than replacing the aircraft.

Given this range and given your request, we had to develop our own estimates, and we used the basic methodology of the FAA study, which seemed overall sound. But we had to use alternative assumptions in certain instances. Our estimate of the cost of a stage 2 ban in 2000 by replacing all stage 2 aircraft is about $5 billion. That is our worst case scenario, and it includes replacing 2,039 aircraft this decade. I'd like to briefly go over the assumptions that we used, because these assumptions explain why there were key variations in the estimates in the studies that we examined.

A real discount rate we used was 7.6 percent. The four studies we reviewed used rates ranging from zero to 9 percent. What is a discount rate? Well, it's basically when an airline is forced to buy a plane as a result of a ban, it's legitimate to deduct from the cost of that plane cost savings that the airline will accrue as a result of the ownership of a new plane, such as operating efficiencies, fuel savings, possibly a plane can require just two people in the cockpit instead of three.

An economically useful life for passenger aircraft—this is a key one, Mr. Chairman—we assumed it would be 30 years and for cargo aircraft 50 years. American Airlines used 30 years in its study, and it was the center point of the 25, 30 and 35 years that FAA used.

We did not think it was reasonable to assume an unlimited life of a passenger aircraft. We assumed 50 years, though, for cargo aircraft. The reason why is they're not used quite as frequently, they don't cycle quite as much as passenger aircraft. But still, 50 years to us seemed more reasonable than assuming a perpetual life of 150 or 200 years or anything in that neighborhood.

The growth rate for the air cargo portion of the U.S. fleet was also an important factor. We assumed a 6 percent growth rate for each year through 2000. This is faster than the 1.9 percent growth rate used by FAA, but it's less than the 15 to 20 percent used in the industry study.

I'd like to go from the worst case scenario to the cheapest scenario.

Mr. OBERSTAR. At that point, I think we'll have to take a slight interruption to record our presence on the House floor and return within hopefully 10 minutes.

[Recess.]

Mr. OBERSTAR. Let us resume, or in the words of Lyndon Johnson, "Let us continue."

Mr. MEAD. I believe, Mr. Chairman, when you were called to the floor that we had just finished outlining the worst case scenario, which was the total replacement of roughly 2,000 planes at a cost of about $5 billion, and I had gone through three or four key assumptions, one of the more important ones being the useful life of the aircraft. I would like now to outline our cheapest case scenario.

The cost of a stage 2 ban would be significantly reduced if a good number of aircraft were retrofitted. New aircraft sell for $25 million to $50 million or more, but stage 2 aircraft can meet stage 3 standards by installing new engines for in the neighborhood of $9 million to $11 million. In some cases, hushkits can be installed at a cost of about $1 million to $3 million per plane.

We did a cost calculation assuming that the airlines would adopt the cheapest strategy for each type of plane in their fleet—replacement, re-engining or hushkitting. That replacement resulted in a cost estimate of $2.2 billion, and that would include replacing 471 aircraft rather than the 2,000 and retrofitting 1,569. So while the exact costs of achieving a stage 2 phase-out are uncertain, we think they are likely to fall between $2.2 billion and $4.6 billion. That's likely to be less than 1 percent of the industry's revenues over the next 10 years, and those revenues should be in the neighborhood of $650 billion.

Finally, let me discuss some of the policy issues which, in our view, the Congress should consider, and there are three basically—how soon the stage 2 aircraft should be phased out, whether other options are needed besides a phase-out, and to what extent should Federal noise regulation preempt local airport restrictions.

On the phase-out issue, it's clear to us that airline and aircraft industry officials could handle the year 2000 but not before then. In the absence, though, of any Federal action, a large proportion of the Nation's largest airports are likely to prohibit the use of stage 2 aircraft by the year 2000 anyway. Under those circumstances, a de facto ban is likely to result by the year 2000 and perhaps earlier. So the issue for Federal policy is whether to adopt the year 2000

as a reasonable date for phasing out the stage 2 aircraft or prevent airports from adopting this or some earlier date.

Second, what other actions are needed besides a phase- out? I think it's very important to recognize that noise abatement strategies like a stage 2 ban are cost effective when an airport is located in an urban area, because the costs of quieting the aircraft noise reduce noise for a large number of people. But even the relatively quiet stage 3 aircraft cause a high level of noise for people who live close to an airport. The stage 3 aircraft is not going to be a panacea for noise near an airport. FAA estimates that even with a total stage 2 ban 1.1 million people living right in the immediate vicinity of airports will continue to receive excessive levels of noise.

So the only way to achieve reasonable levels of noise exposure is through a combination of noise abatement and noise mitigation. Noise mitigation, of course, would be sound-proofing homes and schools and land use planning. Therefore, programs like the FAA's part 150, which pays for noise mitigation, will continue to be needed even with a stage 2 ban. I think that's an important perspective.

There's also an issue here, Mr. Chairman, about whether the part 150 program ought to be extended beyond the immediate vicinity of the airport. In the East Coast plan experience, people living many miles distance from that airport felt that they were receiving excessive levels of noise. Now, the FAA may tell them that the noise isn't that loud, but the people we spoke to there believe that it is, and all of a sudden having 149 jet aircraft flying over your house whereas before there were none does make a difference. But at the present time, only people within that so-called 65 Ldn contour, the noise impacted area around the airport, are eligible for the FAA program.

I'll talk about preemption for a moment. The Federal Government has prohibited the use of stage 1 aircraft—this isn't something that just happened, it was prohibited—but beyond that has generally left the adoption of noise restrictions to individual airports. Now, leaving the responsibility for noise regulation to individual airports does have some advantages. Airports, it's fair to say, vary greatly in how sensitive their neighbors are to noise. One airport may be under great pressure to reduce noise and may be willing to suffer a substantial reduction in service to reduce it. Others may favor a less restrictive noise policy. So leaving noise regulation to the airports obviously allows each airport to tailor its noise policy to its own individual situation.

The problem, of course, is that we have a National Transportation System, and the decisions made by one jurisdiction can affect many others as well as the National Transportation System. It's much more difficult for the airlines to meet uncoordinated airport requirements—a 50 percent stage 3 requirement at this airport, a 75 percent stage 3 requirement at another airport, and a 100 percent stage 3 requirement at still another—than to meet a national requirement that a certain percentage of the airline's overall fleet in any one year be stage 3. If an airline meets an overall fleet requirement, it can then schedule the aircraft to its system in a cost effective and efficient way.

But establishing a uniform rule would require preventing airports from adopting rules that were stricter or inconsistent with the Federal rules, and if airports were prevented from doing this, plaintiffs might seek to hold the Federal Government liable for damages caused by the extra noise. We cannot with any certainty predict the extent to which preemption would make the Federal Government liable, but we can say that under current Federal law no suit may be successfully maintained based on a discretionary Governmental action. It's a murky area as to what a "discretionary Governmental action" is, but typically they occur when the Government balances competing interests such as, in this case, local and national interests, and when that's the case, the action taken is not amenable to a successful lawsuit.

If the Congress does decide to go the route of preemption, a couple of thoughts. The extent of it could be limited by grandfathering the restrictions that are already in place. That would ensure that no airport would experience an increase in noise over what it has now. Only a reduction would occur. But, of course, that would reduce the desirability of uniformity among airports and the benefits associated with uniformity.

The Congress might also wish to allow an exemption process by which airports that thought their local circumstances justified a more rapid phasing out of stage 2 aircraft or some other type of restriction could apply to the Secretary for an exemption or for permission, one might say. That again would reduce the degree of uniformity in the system but would allow some degree of variation in sensitivity to noise.

Now, coming up with the criteria under which to grant exemptions would, in our view, seem very difficult to craft, but a starting point might be to put the burden on the jurisdictions seeking to impose a ban or impose a special noise rule to show that what they propose to do would not unduly interfere with interstate commerce.

And that concludes the summary of our statement, Mr. Chairman. We'd be glad to take any questions you may have.

Mr. OBERSTAR. Thank you very much for your summation and particularly for the very comprehensive document that you and your staff have prepared for our hearing. I find it very thought provoking and one which opens many avenues of consideration that we must weigh in the coming months.

Before proceeding to some questions about the information you've presented to us, I wanted to make an observation about testimony received Tuesday in which New Jersey witnesses raised the question that perhaps studied unfairness by the FAA in an incident just this fall in which an exemption was given for a few days of the U.S. Open Tennis Tournament to allow an adjustment in approach and departure flight paths, suggesting that not all decisions are made on the basis of safety and that other considerations can enter into FAA decisions, including noise impact on communities, and if it can be done in this small instance, why can't other adjustments be made for larger populations who must receive noise on a continuous basis?

So I called Admiral Busey, the Administrator of FAA, and asked him about this, and we had a long discussion about it. The exemption was indeed granted by FAA at the request of New York Mayor

Dinkins because of the significance of this event. The FAA then determined to direct aircraft over a flight path that FAA controllers had long preferred to the one that they were using, which was a flight path determined to be safe but one which would minimize noise impacts on various populations.

In fact, they never used the adjusted flight path because wind conditions made is possible to deflect noise away from the U.S. Open environs, and aircraft continued to operate the previously established flight path. I think that clarification on the record may be useful.

You also cited something that I think is a factor in that discussion and in that explanation from the FAA, and that is that there are variable conditions for various airports. Those that have a heavy urban setting are different from those that are in a rural, semi-rural or suburban setting. Wind conditions play an important role not only in aircraft noise, but also in surface transportation noise.

My home town of Chisholm, Minnesota, is in the heart of iron ore mining country. It is a demonstrable fact to anyone with ears who is not deaf that in the day time you cannot hear the mining trucks or the diesel locomotives hauling crude ore up from the pits. My home on the north side of Chisholm is, I guess, about seven miles as the crow flies from the nearest open pit mine. In the day time, you can't hear a truck, and you can't hear an engine. At night, you certainly can hear those trucks operating.

Now, these are not your ordinary trucks. These carry 120 tons of ore. They have the engines in the rear wheel. The engine is not in the front of the truck, the engine is in the wheel. The tires are eight to ten feet high. These are big trucks hauling big loads. And when it's 40 below zero, with the windows closed as one might safely assume, at 9:00, 10:00, 11:00 at night, one can hear those trucks. But even when it's 40 below zero in the day time, you don't hear them. Part of that is the wind factor blowing that noise in another direction, and at night the wind tends to die down, smoke goes straight up in the air, it looks like American Siberia, and you hear the truck noise.

However, the airport is about the same distance away. I almost never hear the airplanes coming in. We have very few of them, but I almost never hear them coming in or taking off from that airport, even though we're at a distance, although in the day time you can't hear the aircraft. So atmospheric conditions play a role, they obviously played a very interesting role in the New York situation, and I just wanted to make that observation.

You analyzed the ability of manufacturers to deliver aircraft, I'm sure, in the course of your inquiry, with some 2,800 new aircraft on order with Boeing, McDonnell Douglas and Airbus between now and the year 2000, and all manufacturers are significantly behind their ideal delivery schedules. What do you think are the prospects of delivering stage 3 aircraft to meet this goal of a 10-year phaseout?

Mr. MEAD. We held discussions with the manufacturers that account for over 95 percent of the manufacture on that issue, and I'll ask Jack to respond to that.

Mr. WELLS. We asked the aircraft manufacturers whether they would be able to meet the 10-year phase-in period, and they were unanimous in their position that they could, though I think it would be a lot easier for them to do that if they got reasonable notice that the airlines would in fact have to phase out their stage 2 fleets.

Boeing Aircraft, for example, told us that their current production schedule is, I believe, 34 aircraft per month. That comes to over 400 aircraft per year or some 4,000 aircraft over the next 10 years. Boeing has roughly half the market, so that if you include McDonnell Douglas and Airbus, then you're talking about a potential production capacity of something like 8,000 aircraft over the next 10 years. Of course, some of that will go to foreign airlines as well, but our impression is that in view of the 2,000 or so aircraft that will need to be replaced to meet the stage 2 ban that the capacity of the industry appears to be sufficient, particularly when you take into account the potential for hushkitting and re-engining as alternative strategies.

Mr. MEAD. The key was lead time. No matter who you talked to, whether it's the airlines or the manufacturers, just having enough lead time.

Mr. OBERSTAR. Well, of that roughly 2,800 worldwide new orders, how many of those are replacement aircraft and how many are additions to existing fleet?

Mr. WELLS. We don't have an exact number on that. I'm not sure we've made an estimate of what proportion of the production over the next 10 years will be expansion versus replacement. Obviously, that depends a lot on how demand for air traffic develops over the next 10 years.

Mr. OBERSTAR. Given current growth estimates and plans, and assuming the Congress and the President are able to avoid a train wreck on the budget and avoid a recession, there's going to be a rather significant growth. At least 50 and perhaps 60 percent of that new production would be replacement, depending on your estimate of aging aircraft and how long it will be kept in the fleet. That's a factor, and the re-engining and hushkitting.

What is the relative significance, in your judgment, of the principal factors in noise reduction of the engine improvements—re-engining, hushkitting, or new replacement aircraft, air frame impact? Because I learned in my meetings with the production facilities of Airbus, McDonnell Douglas and Boeing if you could somehow shut off the engines of aircraft on approach, you'd still have a very considerable amount of noise from air frame, and the technology of improvements in air frame has if not progressed at least stalled at current state-of-the-art.

Third, zoning. Zoning in urban settings and zoning in green field areas, such as the new-old Dallas/Ft. Worth Airport where encroachment was permitted. What is the relative importance of those factors and their significance in achieving meaningful measurable reduction in noise impact?

Mr. MEAD. I'll ask Allen to answer the bulk of that question, but I think it raises a very important point and something our work has borne out, that in the importance of noise reduction you must look at the individual circumstances of each airport. I mean, we

looked at eight major airports and what was happening at each one of those airports to reduce noise, and each one of the measures that you were articulating a moment ago were ones that they pointed to.

I'll turn to Allen, who did that work.

Mr. LI. Thank you.

Mr. Chairman, I think that your question brings up this issue that we have in our statement, that it's not sufficient just to quiet airplanes, that there needs to be a concerted effort to have a dual track to both take care of noise mitigation and noise abatement. Specifically on the issue of noisy airplanes, I think that currently right now, as we have discussed with the airlines and with the aircraft manufacturers, they have reached the technical limit at which airplanes can be made quiet, and that's with the obvious caveat that airplanes still have to be fuel efficient. Obviously, you can make airplanes very, very quiet, but then the airplane would be so heavy that it wouldn't be efficient anymore.

However, then you have to consider the fact that how much money does it cost to impact a lot of people versus sound-proofing? In other words, you could hushkit an airplane, and an airplane could be hushkitted for about $2 million apiece, and you compare that with the amount of people that would be impacted, both with sound-proofing and with hushkitting. We have done a preliminary analysis, for example, looking at LaGuardia Airport.

If you assume that the dwellings there would be sound-proofed, it might cost on the order of $300 million to $400 million to sound-proof. However, if you were to just hushkit airplanes, it would be of the magnitude perhaps on the order of one-third less, so you have to make that sort of comparison. Obviously, the more dense a city would be, then it would be probably more cost effective to hushkit the airplanes.

The other benefit of hushkitting the airplanes would be you will be impacting other cities, also. In other words, if you sound-proof only one city, you would only address the problems in that city. If you hushkit an airplane, you would affect all the other markets that that plane would serve.

Mr. OBERSTAR. What about the effects that zoning may have?

Mr. LI. I think that zoning is probably one of the biggest issues that are involved here, but as we issued in our report to you, Mr. Chairman, last year, we stated that to have a land zoning issue requires cooperation on the part of the local communities and the airports. Because the airports have no authority over the land zoning around them, they are powerless in many cases to try to direct those communities to do something about it, and that is the reason why that has been not as effective as we would want it to be.

A positive influence is in Atlanta Hartsfield. They were able, because of their layout, to stress land zoning and the acquisition of homes, and they have been more successful than other places like Chicago that are more densely populated.

Mr. MEAD. I think it's an issue not dissimilar, Mr. Chairman, from the PFC issue. One way of looking at it is that the PFC measure was an effort to restore some authority to the airport, but they

weren't as reliant on airlines for financing. But airports generally don't have the power of a condemnation.

Mr. OBERSTAR. Well, I raised the zoning, and I want to get your sense of relative importance for noise reduction.

You gave, Mr. Li, I think a very useful insight, and that is that we're really talking about two basic issues—the benefits of technology advancement or modification in combination with the benefits of environmental modification. Preventing development in a noise footprint of the airport or mitigating the impact on the environmental noise of those structures already located in that noise footprint.

Comparison with our work some years ago on the Investigations and Oversight Subcommittee on the Federal Emergency Management Administration programs where ultimately Congress evolved a policy "We will not compensate people who knowingly and deliberately build in a designated flood plain." We say, "We won't benefit you there, and if you build anyway and you're wiped out by a flood, the Federal Government should not reimburse you." Secondly, HUD and other agencies should not insure people who knowingly build in a flood plain. This was one of GAO's recommendations to us. It was something that just makes common sense.

Zoning, then, in some fashion, is going to be beneficial. What has emerged from the hearing so far is that there are some considerable benefits of zoning in relatively sparsely settled areas or in a greenfield airport, building it in a broad, open expanse, where you have the ability to build into your plan buffer zones. On the other hand, an airport such as O'Hare or Washington National is in the middle of heavily urbanized areas where there are very few options, short of buying out homes and moving people away from the area.

Mr. MEAD. Including people that have moved there since the airport was built. I think the situation at Dulles——

Mr. OBERSTAR. Then we learn this bifurcation, which you just talked about. The airport authority runs the airport, but some other local governing body does the zoning. But even in the case where the airport authority and the zoning authority are one and the same, we saw in our Tuesday testimony a reluctance, or at least an inability, on their part for perhaps a variety of reasons to swallow the bitter pill, make the tough decisions, and do the zoning that's needed.

I want to ask one question and then go on to my colleagues, and that is the very serious question of the liability exposure for local governments, the liability exposure to the Federal Government in noise suits. If whichever unit of government that has the authority to impose restrictions either does or does not, then a liability may result. There have been lawsuits about this matter, and I'd like to have your observation about the relative exposure of the Federal Government to noise suits in the event the Federal Government should preempt local authority.

Mr. MEAD. I think you will see lawsuits, possibly many lawsuits, and the question, of course, becomes will they be successful, and it's difficult in this area, as we're reviewing the case law, it is a very murky area. But from what we can tell, the key issue depends on whether we would be amenable to a lawsuit under the Federal

Torts Claims Act, and that Act says that when the Federal Government does something that is discretionary in nature, we're not open to a successful lawsuit.

And discretionary Government activities typically occur when there is extensive balancing of interests, and the law seems to recognize that that's a role the Federal Government must play and that in that process some people will end up not in a situation that makes them entirely happy. I think the Federal Government has been found liable in the past for its aircraft when they fly 50 feet over somebody's house. We have lost lawsuits in those cases where it's frequent, immediate, low overflights where there had been none before.

You know, there is a provision, Mr. Chairman, I believe it's in Federal law where an agency can request an advisory opinion from the Department of Justice on proposed legislation, and that might be an option that Secretary Skinner would consider availing himself of.

Mr. OBERSTAR. Thank you for those thoughts, and I will come back with further questions later. At this point, I will recognize Mr. Clinger

Mr. CLINGER. Thank you very much, Mr. Chairman.

Mr. Mead, as always it's a pleasure to have you with us here in committee with the very thoughtful and thorough and complete reports that we get from your shop.

One of the witnesses at the hearing Tuesday proposed in response to some of my questions that any Federal noise policy, especially those that would impose operating restrictions, should be uniformly applied to all airports without regard for their proximity to cities or whatever. In my case, for example, I have airports where noise is really not a serious problem. In fact, sometimes it's so quiet out there they welcome the noise.

So the question is, should the airlines or carriers be prohibited from using noisier aircraft in areas where noise pollution is not a serious problem and that would enable them to make the most efficient use of planes, or is that going to cause serious problems down the road. What would be your reaction?

Mr. MEAD. Well, my whole view on that, I suppose the view we have taken in our testimony, is on the phase-out issue, the ban versus no ban issue of stage 2 aircraft, I think there is more to be considered than just the local airport and its surrounding neighbors. I mean, we have a whole industry we're dealing with here, and our analysis shows that it can be quite disruptive to the industry.

And I think you know, Mr. Clinger, that we've appeared before you in the past, and we have been no shrinking violets in taking issue with the Air Transport Association and the airlines. In this case, though, I think they have a point about trying to deal with 150 different rules. That's on the ban issue.

To come back to Mr. Oberstar's point about the prevailing winds at one airport may create a situation that's different from that at another airport, so there are some intermediate types of issues. Like how to approach an airport, locations of runways, perhaps night curfews. I think there is some room for letting the local jurisdictions petition on a case by case basis. But on the overall issue of

a ban versus no ban, I don't see how we can continue much longer. I think the industry does need some lead time and so do the manufacturers and that they can't take orders from 150 different jurisdictions.

Mr. WELLS. If I could add to that, Mr. Clinger, I think the important aspect of a national rule is that it would not impose any restrictions on which aircraft you could use at any particular airport. It would govern what percentage of your overall national fleet would have to be stage 3 aircraft, but at any given airport you could use whichever aircraft in your fleet happened to be most efficient for servicing that particular airport so that the percentage of stage 3 aircraft at any particular airport might be somewhat higher or somewhat lower than the average percentage in your overall fleet.

Mr. CLINGER. You're contemplating, then, that we would continue to maintain some stage 2 aircraft indefinitely here?

Mr. WELLS. Well, not indefinitely, because presumably there would be some date at which you would phase out all of the stage 2. There might be some—generally, the airlines route their aircraft through enough airports that they would eventually be used at an airport that would want to have those restrictions in place. Now, there are some routes that are essentially shuttle routes—Southwest Airlines, for example, uses a lot of its aircraft on shuttle routes where the aircraft is used only to service perhaps two or three airports—and it's conceivable in that kind of circumstance that you might have those three airports not wishing to have any restrictions, but I think that's really an unusual kind of aircraft routing in today's airline industry.

Mr. CLINGER. If we have set a date certain, say the year 2000, to eliminate all stage 2, did you consider whether or not the carriers would be in a position to make that transition economically? In other words, if they're going to dump a lot of stage 2 aircraft onto the market, are there going to be enough buyers out there in the Third World or other areas where noise is not the problem to purchase those, or are they going to be stuck with a lot of stage 2 aircraft that they can't get rid of?

Mr. MEAD. Yes, we did. I'm going to turn this over to Jack, but we analyzed a phase-out. We were envisioning an orderly phase-out, not just in the year 2000 all of a sudden everything would become stage 3. It would be a year by year phase-in. But we looked at a worst case scenario of replacement of all planes that would have been premature replacement, we call it, just replacement instead of retrofitting, and then we did a cut on retrofitting. The difference is pretty substantial on the replacement issue. About 2,000-odd planes would have to be replaced versus 400-odd planes under our retrofitting scenario.

I'll let Jack respond to the airline part.

Mr. WELLS. The analysis that we did did include a salvage value for the stage 2 aircraft that would be retired, but that salvage value was quite small. It was only, I believe, $1 million or $2 million. The cost estimate is not very sensitive to that salvage value. If you eliminated that salvage value because of the loss of market value of those old stage 2 aircraft, it would not significantly affect our cost estimate.

Mr. CLINGER. Okay. Thank you, gentlemen. I may have some questions later on.

Mr. GEREN [assuming chair]. Mr. DeFazio, do you have any questions for the panel?

Mr. DEFAZIO. None.

Mr. GEREN. Mr. McEwen, do you have any questions?

Mr. MCEWEN. Yes.

Mr. Li, you're the expert on this new flight plan they have on the East Coast, is that right?

Mr. LI. We're only familiar with it as of our work that was completed two years ago, sir, so I'm not familiar with any latest changes that they've made.

Mr. MCEWEN. Okay. Are you familiar with the testimony we had on Tuesday?

Mr. LI. I'm familiar with some of the basic issues that were raised last Tuesday, yes, sir..

Mr. MCEWEN. Okay. They mentioned that there are far superior options that were available and that kind of thing. Can you fill me in?

Mr. LI. I think one of the issues that was brought up, sir, was the issue of trying to route more of the planes over the ocean, and that particular issue is one that is contentious between DOD and FAA. The air space near the ocean is sometimes used by the military, and it's restricted air space. What the citizens of New Jersey are trying to bring to light is to have FAA be more aggressive with DOD to try to get more of that air space so that flights can be routed over the ocean.

Mr. MCEWEN. What do they use it for, do you know?

Mr. LI. I do not know, sir.

Mr. MCEWEN. What DOD uses it for?

Mr. LI. I do not know, sir.

Mr. MEAD. I do know that the whole special use air space issue is in a state of change at FAA right now. We did issue a report on special use air space some time ago. I can't speak to that particular piece of the special use air space that Allen is referring to, but generally the military departments and FAA didn't have much of an idea of how much it was being used, and it was strongly suggested in our report that the military had more special use air space reserved for exclusive use than it needed. But, again, I can't speak to the specific space in question here.

Mr. MCEWEN. Do you know if FAA challenges that at all? Did they try to work something out, or is it just a given that DOD gets it?

Mr. LI. No, they have, sir, and as a matter of fact, one of the reports that we issued two years ago on the West Coast plan pertains specifically to that issue where there is a funnel effect on the West Coast where all the flights have to go through certain areas, and they're constricted because of all the restricted air space that occurs out there because of Yuma Proving Grounds and Vandenberg Air Force Base. All those things create a situation where airplanes have to fly in very narrow corridors, and that obviously causes some congestion.

They are working. What we had found during that work was that FAA and DOD had not worked it out very well together, and

as a result of our work, I believe that FAA and DOD are now in greater discussions in trying to alleviate that problem.

Mr. MEAD. Technically, FAA is the authority on special use air space. I mean, they can approve or disapprove.

Mr. MCEWEN. Oh, really?

Mr. MEAD. Yes, technically that is so.

Mr. MCEWEN. Is anybody allowed to be employed at the FAA is not retired from the military?

Mr. MEAD. That is not——

Mr. MCEWEN. Your accounting office hasn't checked that?

Mr. MEAD. No, that's not one of the issues that we're pursuing, sir.

Mr. MCEWEN. I'm curious. Do you have a concern about the financial impact of energy and other factors in the last few weeks on whether or not the progress is being made from stage 2 to stage 3, et cetera, and whether or not that's going to be forced to be halted here?

Mr. MEAD. No. I do think that there's a silver lining in all this, though, that it might encourage the airlines to seek more fuel efficient planes. Newer planes.

Mr. MCEWEN. Do hushkits make it more fuel efficient?

Mr. LI. No, sir. In the noise reduction technologies, obviously hushkitting would actually result in a decrease in efficiency and would require more fuel. The other alternative that is available, which is re-engining, would increase the fuel efficiency, so that would be something that would have to be considered. Obviously, when you're comparing a hushkit program that could cost about $3 million versus re-engining which is on the order of $10 million, you have to have certain trade-offs there and how long the aircraft would be in service.

Mr. MEAD. I feel like I've punted in response to your question, and I want to be more direct. Yes, I am concerned, and I think there has to be some give and take here on the airlines part, and yes, this will cost the airlines some money. I think in fairness to the airlines that we owe it to them to give them sufficient advance notice so they can arrange their financial affairs over the next 10 years. They are taking a hit now as a result of the fuel prices, and who knows where things will stand six months from now on that point?

Mr. MCEWEN. Do you have any recommendations on what part the Government should play?

Mr. MEAD. No.

Mr. MCEWEN. No. Well, you're right. I think there is a trade-off. We wanted some clean air, and we had some steel mills in Ohio, and we got the clean air. We got that down pat. Now we don't have any steel. We might have some quiet nights if we get to vote on this. We can make those airports awfully quiet.

Mr. MEAD. Well, from our interview with the airlines, I think they see that they have to go to stage 3. They see that coming. They're trying to structure their affairs in such a way that they can meet that. There is some disagreement on the date. I think the outer limit date that we picked up was 2010 instead of the year 2000, but I think that the airlines would be prepared to accept a

reasonable accommodation of 2000 if we were to tell them that this is what the game plan will be.

Mr. MCEWEN. For this Congress.

Mr. MEAD. Yes, sir.

Mr. MCEWEN. Thank you.

Mr. GEREN. Mr. Mead, you spoke of an effective stage 2 ban if a sufficient number of airports were to take that step independently. How small would that number of airports need to be for that to take place, and do you see that happening, and if so, how soon do you think that's going to be a de facto policy?

Mr. MEAD. There are three airports that have a total ban at the present time. There are two medium and one small.

Mr. GEREN. Where are they?

Mr. MEAD. Orange County, California. Actually, all three are in California. Long Beach and Burbank. We know of one other that's likely to do a total ban before 1995, and we know of 11 or 12 others that will do it after 1995. We don't know when, and these are just the large airports, and it will represent 41 percent of the large airports, and I don't know exactly what percentage of enplanements, but certainly those 12 will be enough to cause—46 percent of all enplanements in the country would be affected by the airports that are telling us they're going to go to a total ban. The problem is we don't know when in that time frame exactly they're going to move.

This information, incidentally, we got under a confidential questionnaire, because these airports don't want to tilt their hand to FAA, they don't want to tilt their hand to their community. In other words, some of these airports told us they weren't going to have a ban. I'm not sure that they wanted their community necessarily to know that, but certainly the numbers that we have here would suggest that you're going to have a de facto ban, and 12 is sufficient if these are major airports.

Mr. GEREN. All right, thank you. I have no further questions.

Does anyone on the panel have further questions?

Mr. MCEWEN. Just one more.

Have you reviewed Senator Ford's bill?

Mr. MEAD. Is it written?

Mr. MCEWEN. I think he introduced it yesterday.

Mr. MEAD. No. I've been following the accounts of its development, I guess I should say.

Mr. MCEWEN. Particularly the private right of action. Is that——

Mr. MEAD. No, sir.

Mr. MCEWEN. That's not in your lot. Thank you very much.

Mr. GEREN. Mr. Mead, when we phased out stage 1 aircraft in the early 1980s, Congress required certain proportions of the carrier's fleet to meet stage 2 standards by certain dates. Would you suggest the same type of approach with the stage 3?

Mr. MEAD. Yes. You can get a pretty good sense of where the different airlines are right now in terms of how many Stage 2s they have and how many Stage 3s. I think that would make very good sense.

Mr. GEREN. All right. Thank you very much.

If there are no further questions, I thank the panel very much for its testimony and for the work in preparing it.

Mr. MEAD. Thank you, sir.

[Mr. Mead's prepared statement appears on p. 461.]

Mr. GEREN. I now call the next panel, Mr. Albert Wiseman, Mr. Doug Kuelpman, Mr. Herbert A. Rosenthal, Mr. Brian Cole, and Mr. Stephen A. Alterman. I want to thank this panel for being with us today, and then I'd like to yield to Mr. McEwen, who would like to make an opening statement.

Mr. MCEWEN. Thank you, Mr. Chairman.

I am delighted to welcome especially Al Wiseman, who is President of Airborne Express, Incorporated, which, as you know, is the air portion of the overnight delivery service of Airborne Express, and he has been a great help to me with his expertise. He runs a spectacular operation, the second largest overnight delivery service in America and in the free world and as a result of locating in the 6th Congressional District of Ohio has benefitted all America and the free world, and I'm grateful for that.

Mr. GEREN. Thank you, Mr. McEwen.

We'll be glad to proceed in the order that you wish, and I believe that I have this correct. If I don't, feel free to correct me, but I first call Mr. Stephen A. Alterman.

TESTIMONY OF STEPHEN A. ALTERMAN, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, AIR FREIGHT ASSOCIATION

Mr. ALTERMAN. Thank you, Mr. Chairman.

Good morning. My name is Stephen A. Alterman, and I'm the Executive Vice President and General Counsel of the Air Freight Association. The Air Freight Association is the trade group that represents those carriers who fly all-cargo aircraft, and many of those companies are represented here today, and you will hear from them individually. Because we have so many of our members here, I will be very short, and I will turn it over to the members of the industry who can perhaps give you more of an insight of how their businesses are affected by noise.

First, I'd like to thank this committee for holding these hearings and especially hearing from the all-cargo industry as a panel. We appreciate the time that you've given us.

Before beginning my short oral comments, I would like to note that we have filed fairly extensive written testimony with the subcommittee, and we request that these comments formally be made part of the record.

Mr. GEREN. They will be.

Mr. ALTERMAN. Thank you. I won't attempt to repeat those comments here, but I'd just like to highlight some of the major points.

First, and perhaps most importantly, I'd like to assure both the Congress, this committee and the general public that our industry is not insensitive to the problem of the noise generated by the aircraft we operate. Indeed, our association members, such as Federal Express, Airborne Express, UPS, and others, have at considerable expense been in the forefront of the research and development efforts to manufacture hushkits, which will effectively convert existing stage 2 equipment to stage 3 noise standards and/or permit the re-engining of existing aircraft to meet these requirements.

These projects are ongoing, and our fleets will be converted as soon as possible to stage 3. There's no question about that. We're

not saying we are going to operate stage 2 equipment forever, but this process cannot be completed overnight. It is simply an impossible task to do so. Therefore, we need a national policy to deal with this problem. We need a policy that will allow the businesses in our industry to make rational business planning decisions in how they're going about their fleet compositions and how they operate those aircraft.

This is not an easy problem. We understand the problems and the delicate balances to be made. Indeed, I might point out that for the past four or five years I've served on—I think it's up to three now—task forces dealing with the noise issue, trying to fashion a workable solution or at least a way to manage the noise problem, and those task force meetings are continuing, and I understand that you will be having testimony from the Aviation System Capacity Task Force later on.

I have not read their testimony, but I would like to say that if anyone says that there is consensus or unanimity within not only the industry but members of those task forces, I would like to register a dissenting vote right now. I don't think there is any agreement right now, even among the members of the task force, and it is a diverse group. So the problem is hard, but we think a balance has to be made, and it has to be made on the Federal level.

With that introduction, I would like to turn it over to the members of the industry. I will, of course, stick around in case you have any questions about our testimony.

Mr. GEREN. I'll call on Mr. Kuelpman, and I apologize if I butchered your name.

In every case, we'll accept a written statement for the record and ask that you summarize your statement in your oral testimony today.

TESTIMONY OF DOUGLAS R. KUELPMAN, DIRECTOR, PUBLIC AFFAIRS, UNITED PARCEL SERVICE COMPANY

Mr. KUELPMAN. Mr. Chairman, thank you, and members of the committee. This is my solo flight before any committee here in Congress, and it's a privilege to be before your committee.

The United Parcel Service appreciates this opportunity to present our views, and clearly we are very concerned. The Federal Government has vacated the field of economic regulation, and local governments have been rushing to fill a void in the airline industry. Local airport access restrictions are imposed for environmental or noise control reasons, and their economic impact on the National Air Transportation System is nonetheless significant.

Mr. Chairman, we're spending billions of dollars to be a good neighbor and acquire the quietest fleet possible. Among carriers with over 100 large jet aircraft, only American Airlines has a higher percentage of stage 3 aircraft than does UPS. Our history of aircraft noise reduction began in 1983 with the re-engining of our DC-8 fleet at an approximate cost of $16 million per airplane. In 1985, we became the launch customer for the cargo version of the 757, an aircraft recognized as one of the quietest stage 3 aircraft in the world. Earlier this year, our Boeing 727 re-engining program was announced at a cost to us of $400 million.

Nevertheless, despite this huge financial commitment of over $2 billion to date, the continued viability of the UPS domestic and international system is threatened by opening the flood gates of inconsistent local restrictions. At John Wayne Airport, for example, the Orange County Board of Supervisors currently prohibits all-cargo carriers from operating there with what the airport refers to as "A" or "AA" departure slots. Cargo carriers are excluded, even if they propose to use a quieter aircraft than those operated by the passenger carriers using the same slots.

The passenger airlines, however, are able to provide both express service and general freight service by utilizing their belly freight capacity in direct competition with UPS and the other air cargo carriers. This, sir, is economic regulation and indeed discrimination at its worst.

Los Angeles, Ontario, and the airports at the Port Authority of New York and New Jersey, just to name a few, are considering rules to convert a certain percentage of their operations to stage 3 immediately. If you have only one 727 flight a day and an immediate 25 percent stage 3 requirement, obviously this amounts to 100 percent Stage 3 requirement from the start for the typical air cargo operation.

Let's go back to the Airline Deregulation Act of 1978. A number of carriers testified concerning their fears that States and localities would rush to fill the regulatory void left by the Federal Government. Isn't that actually what's happening? Economic regulation by one Civil Aeronautics Board was bad enough. Economic regulation by hundreds of localities was unthinkable, and Congress agreed by enacting section 105, the Federal Preemption Provision, of the Airline Deregulation Act.

A growing body of laws suggest, however, that only the Federal Government can move to enforce this section. The Federal Government is simply not equipped to monitor airport access regulations of every airport, much less have the resources to bring lawsuits whenever the situation warrants. It is the air carriers which are most severely affected by unfair, unreasonable and discriminatory airport access restrictions, and it's the air carriers who should have a private right of action to seek redress under the Federal Aviation Act.

In summary, Mr. Chairman, we acknowledge the need for environmental conservation. Federal policy in this area must be a certainty. Carriers need certainty to invest the billions of dollars necessary to acquire a quiet aircraft. Carriers deserve certainty that the investment made in aircraft now will be protected in the future.

UPS strongly urges this committee to adopt measures that will allow for a reasonable transition to stage 3. We believe this can be accomplished by establishing a Federal aviation noise policy addressing the following: one, a guarantee that the investment in stage 3 aircraft is protected by prohibiting local restrictions on the use of stage 3 aircraft during their useful life, including a prohibition on night time operations; allowing for the use of stage 2 aircraft during the phase-in of stage 3 aircraft; providing for the phase-out of stage 2 aircraft no sooner than the year 2000; and al-

lowing for a private right of action by carriers to seek redress under the Federal Aviation Act.

In conclusion, UPS is committed to being a good neighbor and to operating quieter aircraft. Nevertheless, despite these efforts we are seeing ever-increasing adverse impacts on our domestic and international system by the increasing proliferation of uncoordinated, locally imposed airport access restrictions, having severe impacts on the Interstate Commerce System. This direction must be reversed.

Mr. Chairman, thank you very much.

Mr. GEREN. Thank you, Mr. Kuelpman.

Now I'll call on Mr. Wiseman.

TESTIMONY OF ALBERT D. WISEMAN, PRESIDENT, ABX AIR, INC.

Mr. WISEMAN. Thank you, Mr. Chairman.

On behalf of the 11,000 employees of Airborne Express, I wish to thank you and this subcommittee for the opportunity to present our views on the subject of aviation noise. As one of the Nation's largest providers of expedited cargo service, Airborne is and has been vitally interested in this important issue. I applaud the leadership shown by you and the subcommittee in conducting these important hearings.

As a preliminary matter, let me briefly describe the operations and functions of ABX Air. ABX Air is a wholly-owned airline subsidiary of the Airborne Freight Corporation and collectively trade under the name of Airborne Express. Currently, the airline's fleet consists of 19 DC–8, 30 DC–9, and 12 YS–11 aircraft. Our fleet will consist of 131 jet aircraft by the year of 1995.

Over the past 12 months, Airborne's revenue has exceeded $1 billion. Over the past six years, Airborne has been the fastest growing express freight carrier based on the percentage of growth and shipment volume. Airborne, as well as the other cargo carriers, stand as shining examples of the benefits of the 1977 Cargo Deregulation Act, but more importantly, users of air cargo have benefitted from the wide variety of new and economically priced cargo services.

Airborne, as primarily a night time operator, is sensitive to the issue of aircraft noise. Airborne has long advocated a simple three-part solution to the aircraft noise question. First, the FAA should require all carriers to operate only Stage 3 aircraft by a date certain, hopefully the year 2000. Second, the Federal Government should preempt the field of aircraft noise control as it has preempted local regulation of interstate trucking and railroad noise in 1972. Third, through regulation and incentives, the Federal Government should encourage aircraft operators and political subdivisions adjacent to the airports to eliminate non-compatible land use and provide relief from excessive noise by sound-proofing and other means.

This policy, once implemented, will produce a number of significant public benefits. First, by the phased elimination of noisier stage 2 aircraft, the Federal Government will have seen to it that only the quietest aircraft will be permitted to operate. Second, by eliminating local control of aircraft operations based on noise consideration, airport proprietors will have no incentive or reason to

regulate operations of air carriers. Finally, a strong Federal program to eliminate non-compatible land uses will reduce even further the number of people living in those noise impacted areas.

A policy to harmonize aircraft noise regulation will serve the common objective of ensuring that the United States has the airway and the airport capacity necessary to meet the challenges that lie ahead. It is clearly counterproductive to legislate, regulate and fund increased airport and airway access and at the same time continue to permit uncoordinated local actions in the name of aircraft noise that reduce vital air carrier access.

As the industry proceeds to phase out the operation of stage 2 aircraft, it is important that we fashion a regulatory regime that will govern the actions of airports and air carriers in the transition period. It would make no regulatory sense and would represent public policy at its worst for airports to continue to be authorized to regulate the operation of stage 2 aircraft that remain in service during this transition period.

Airborne's concern for a transition period free from local control is grounded in the simple, but undeniable, fact that despite all of Airborne's best efforts there will not exist for several years either the capacity or technology to convert all of the cargo and passenger airlines' fleets to stage 3 by utilizing either so-called hushkits or new engines, and those that are looking to the forward to the purchase of new stage 3 equipment will not have their demands satisfied by the air frame manufacturers for many years to come. As the used stage 3 aircraft market is quite small, carriers looking to purchase such used equipment will not be able to do so in sufficient numbers during this decade.

Airborne has spent over five years exploring various noise mitigation alternatives and has developed programs which are beginning to produce results. Airborne and its associates have developed an effective stage 3 hushkit for the DC–9 and DC–10 series, 31 series, and 32 series aircraft. Fabrication of these hushkits is estimated to be late November of this year. By the way, there is no fuel degradation on our particular hushkits.

Based on Pratt & Whitney's projected manufacturing rates for hardware used in the hushkits, it will take over seven and a half years to produce all the hushkits necessary to convert the world's DC–9 fleet. Carriers committed to the stage 3 must be protected from locally imposed restrictions on the stage 2 operations during the transition period.

The subcommittee established that one of the issues to be explored in these hearings is a need for changes in the standard procedures which govern aircraft noise-related suits. Although air carriers have often sought to obtain judicial review of locally adopted noise regulations, the courts hold that neither the Federal Aviation Act nor the Airport and Airway Improvement Act provides for a right of private parties to challenge airport proprietor regulations. This leaves the air carriers without the ability to directly confront an airport rule before an impartial tribunal.

Rather, our primary remedy is to attempt to convince FAA that the adoption of a local noise rule violates Federal law and to urge the agency to challenge local action. Limited FAA resources often preclude the agency from bringing potentially expensive and pro-

tracted litigation to halt improper local regulations. Airborne believes it is fundamentally unfair to allow airports the right to exercise their rights and at the same time to shield the exercise of that authority from judicial review when brought by parties primarily injured by the local regulation.

Local control of aviation noise is undoing all of our collective efforts to increase airway and airport capacity. A policy favoring uniform regulation of interstate air transportation and aviation noise is in the best interest of all. Airborne is prepared to work with you, Mr. Chairman, and the subcommittee to seek an appropriate legislative solution to this important matter. Thank you.

Mr. OBERSTAR [resuming chair]. Thank you very much, Mr. Wiseman. I think that concludes the testimony from the panel. We certainly appreciate the very important perspective——

Mr. WISEMAN. Mr. Chairman?

Mr. OBERSTAR. Oh, is there one more? Oh, I'm sorry. I missed the earlier part of the testimony, so I had all the names checked off here. I'm sorry.

Mr. Cole?

TESTIMONY OF BRIAN COLE, GENERAL COUNSEL, BURLINGTON AIR EXPRESS

Mr. COLE. Good morning, Mr. Chairman, and members of the subcommittee. My name is Brian Cole, and I'm Corporate Counsel for Burlington Air Express. On behalf of Burlington, I'd like to thank you for the opportunity to present our views with respect to this very important Federal aviation noise policy.

I'm testifying here today to urge the subcommittee to adopt a balanced approach which reaches a reasonable accommodation between the desirability of reducing aircraft noise and the needs of the all-cargo industry and the millions of shippers that rely on us. Burlington is very conscious of the problem of aircraft noise and wants to be a good neighbor. We anticipate that over the next five years we will spend $20 million to $30 million modifying our aircraft to achieve stage 3 compliance.

However, we want to be sure that you fully consider the marked difference between the economics of the air cargo industry as compared to the air passenger industry, as well as the severe practical constraints on how fast the all-cargo carriers can achieve stage 3 compliance. Above all, it's essential that this be uniform and Nation-wide. The all-cargo carriers must be able to plan for the long term aircraft improvements with the assurances that once they invest millions of dollars they will be able to operate their aircraft throughout the country without unreasonable or contradictory noise requirements.

Capital costs are a substantial part of the total cost to the all-cargo carrier. Burlington currently gets an average daily utilization of only 4.2 hours on its aircraft as compared to eight to 10 hours of daily utilization which is achieved by the passenger air carriers. Thus, the capital costs of Burlington's aircraft can be spread over relatively few hours as compared to the combination carriers, and therefore we, like most all-cargo carriers, are forced to rely heavily on lower cost, used aircraft.

Burlington currently uses a fleet of DC-8-63s and -54s, Boeing 707s and 727s. Unfortunately, there is currently no technology certified by the FAA for hushkitting of these DC-8s and 707 aircraft. Even if the necessary technology is approved in the very near future, it's simply not practical for Burlington to achieve full stage 3 compliance all at once. Manufacturers have limited facilities and cannot handle all the aircraft conversions at one time, and they will need to be phased in over a reasonable number of years. Moreover, Burlington is simply not in the financial position to pay for the conversion of its entire fleet within these few years.

It needs to be recognized that the air freight business is extremely competitive. The basic cost to the combination carriers are essentially covered by the passenger revenues. Burlington must cover all of its costs from freight alone and yet, at the same time, remain competitive.

As I noted at the outset of my testimony, Burlington intends to spend $20 million to $30 million for conversion to stage 3 over the next five years. It's extremely important that once this money has been spent for stage 3 conversion that Burlington is permitted to operate these aircraft on a non-discriminatory basis at any airport that it chooses in the United States.

It would be difficult if not impossible to make sound long range investment plans if each local airport has the power to implement its own rules. Several airports have adopted or are considering adopting regulations which phase in stage 3 aircraft over a period of time but in a manner which is unrealistic for the all-cargo carriers. For example, Los Angeles has proposed a requirement that 25 percent of the flights must operate within stage 3 equipment after January 1, 1991. This provision on its face appears fair and nondiscriminatory; however, in actual practice, as in the case of Burlington, it's extremely discriminatory.

For example, as with Burlington, if we have only one flight or two flights a day, the 25 percent rule requires as a practical matter that 100 percent of our flights be in compliance with stage 3 aircraft. The problem at Los Angeles is compounded by the fact that it has limited each carrier to a number of stage 2 flights operated on a historic basis. Burlington follows the practice which has been adopted by a number of major air freight carriers of not operating its aircraft itself but, instead, of leasing them to part 121 carriers which operate the aircraft on our behalf.

Los Angeles has recently held that those part 121 carriers are the holders of the allocated positions rather than Burlington. The refusal of Los Angeles to recognize Burlington as the real party and interest in these operations makes it impossible for Burlington to switch carriers, and a particular market is needed to achieve maximum efficiencies.

Standard of service in the air freight industry has become next-day service. Instead of tying up huge sums of money and capital for large inventory, American businesses maintain just-in-time inventories and rely on our overnight service to accommodate that. This requirement of overnight delivery necessitates that the all-cargo carriers operate during night time hours at almost all locations.

The FAA determined land use compatibilities at airports by use of the Ldn noise metric. That noise metric counts one night time

flight as the equivalent of 10 day time flights. It's highly doubtful that a 10 to 1 penalty is justified. It's extremely important to the all-cargo industry that any future noise metric be realistic and be based on hard facts rather than simply imposing an arbitrary penalty to night time operations.

Another unique feature of the all-cargo carriers is their need to serve every region of the country. Passenger air carriers serve only certain selected markets. However, cargo shippers want and insist upon a cargo carrier which can carry all of its freight to all parts of the United States, if not the world. Therefore, it's unreasonable in a situation such as the one proposed in Los Angeles which precludes Burlington from serving such a city. Burlington would not only lose its business in Los Angeles but could also lose key accounts to competitors throughout the country and indeed throughout the world.

Based on all the foregoing factors, Burlington makes the following recommendations to this subcommittee. Any schedule for phasing in conversion to stage 3 aircraft must be realistically keyed to FAA's certification procedures. It should take into account the limited availability of manufacturers' facilities, and any schedule for phasing in of stage 3 aircraft should recognize the fact that a 25 or 50 percent requirement for the carrier which operates only one fleet a day is in reality a 100 percent requirement.

The ideal solution from our perspective to this problem is to exempt as de minimis all-cargo operations with two or three flights a day at a particular airport. Recognition needs to be given to the low aircraft utilization rates of the all-cargo carriers as compared to the passenger carriers. Special recognition should also be given to the absolute need of all-cargo carriers to operate at night in order to provide the next-day service that's needed. Special recognition should also be given to the need of the all-cargo carriers that serve every section of the country, since the exclusion from even one city can have a crippling effect on the entire system.

The Federal Government should adopt uniform, nation-wide noise standards so that all-cargo carriers complying with those standards can operate at any airport in the United States on a non-discriminatory basis. Finally, the air carriers should be given the private right of action so that they can bring suits directly into the Federal courts to enforce the non-discrimination provisions of the airport aid grant agreements. Thank you very much for your time.

Mr. OBERSTAR. Thank you very much for your very responsible insights into this issue.

We will now hear from Mr. Rosenthal, Counsel for Florida West Airlines.

TESTIMONY OF HERBERT A. ROSENTHAL, COUNSEL, FLORIDA WEST AIRLINES

Mr. ROSENTHAL. Good morning, Mr. Chairman and members of the subcommittee.

Florida West Airlines appreciates the opportunity to present its views on a Federal aviation national noise policy. John Maloney, the President of Florida West, is sorry he could not be here today, and he has asked me to speak in his place.

Florida West favors a national uniform noise policy applicable to the civil aircraft of all users of this Nation's air space and airports, both U.S. carriers and non-U.S. carriers. Such a uniform policy is fair to airport neighbors and is fair to each carrier which spends the funds to hushkit or re-engine its aircraft.

A national noise policy will permit a more rapid introduction of quieter stage 3 aircraft by today's users of older aircraft. Our stage 2 707s can operate well into the 21st century. The cost of stage 3 compliance is substantial. A national noise policy without a patchwork of differing local regulations will assure carriers like Florida West that going to stage 3 will allow it to operate its 707s until the end of their useful lives and will motivate the designers of hushkits to accelerate their work because they will have the certainty of a market.

We are asking that a national noise policy guarantee that stage 3 aircraft will be accepted 24 hours a day at U.S. airports. In the interim, that policy should allow carriers to purchase additional stage 2 equipment to meet growth and that the night time operating restrictions imposed by airports like JFK, Boston and San Francisco be rolled back.

Florida West is committed to staying in business and retrofitting its 707 aircraft with stage 3 hushkits when that technology becomes feasible and certified. But before Florida West is willing to spend the $1 million to $2 million per aircraft required to achieve these stage 3 levels, it wants the playing field to be level and its access to the Nation's airports guaranteed. This means there must be a national noise policy that applies at all U.S. airports and to all civilian users, including foreign airlines.

A major benefit of a uniform policy applicable to all carriers and airports is the benefit to the environment. An all stage 3 fleet, both U.S. and foreign, will produce an overall reduction of the number of persons living within the Ldn 65 contours, which numbers have been shrinking rapidly anyway. Because much cargo moves at night, the reduction of aircraft noise at night benefits the airport environs, and all carriers, both U.S. and foreign, must be good citizens and take reasonable, although costly, steps to reduce aircraft noise. No airport should be permitted to exempt itself from the national noise policy in order to gain a competitive advantage over other airports by allowing stage 2 operations after stage 3 becomes mandatory.

Florida West's main market today is the Latin American and Caribbean area where Florida West competes on a non-level playing field. We have noted in our written statement the operational cost advantages available to foreign carriers whose operating restrictions are far less rigorous than FAR part 121. We have done so so that this subcommittee and the Congress will not consider a more relaxed treatment for foreign carriers and governments which cry poverty or different dates established by ICAO and thus seek exemptions from the stage 3 compliance date set by Congress or the FAA.

Florida West believes that the lessons of the mid-1980s with respect to the Government's determination to upgrade from stage 1 to stage 2 have been learned. That push created chaos for the 707 and DC-8 operators, but it eventually achieved its goal. While we

want to avoid chaos, there should be an attainable deadline set. A national noise policy should require all carriers, U.S. and foreign, to achieve 100 percent stage 3 operations by a certain date and require that airports must accept stage 3 aircraft at all times.

Before the stage 3 deadlines, the carriers should be free to expand their fleets of stage 2 aircraft and receive some relief from the patchwork of local airport ordinances. In such a scenario, Florida West would commit to a program of conversion of its aircraft to stage 3. Thank you very much.

Mr. OBERSTAR. I want to thank the panel for the very fine testimony that was thought through carefully with respect to the impact of noise regulation upon cargo carriers. You have given us very important insights in an area that I have had a great deal of concern about for all the years that I have worked on aviation matters, and that is cargo carriage, particularly in international commerce, assuring that our bilaterals give U.S. cargo carriers fair treatment and that we not trade off the cargo interests against passenger interests in those negotiations.

I think that regime has not achieved everything we've wanted, but we've made great progress developing a cargo policy and awareness on the part of the State Department and the Department of Transportation of the significance of cargo so that we not lose yet another sector in which America now has preeminence. But as your testimony lays out here, and I think the UPS presentation put it very well, we've traded single agency Federal economic regulation of air carriers and the economics of aviation for hundreds of local governments conducting economic regulation of aviation through environmental considerations—noise, particularly—and the further competition with those passenger aircraft that are capable of handling belly freight getting preferential treatment for passenger carriage while still, to that extent, competing with all freight operators because they have preferential treatment for service.

Where do most of the complaints that the cargo carriers receive arise? Is it from the hub cities or is it from the airports at the end of your spoke operation? Mr. Wiseman?

Mr. WISEMAN. Airborne is somewhat unique in that we own our own airport, which is our hub, and we also employ about one-quarter of the city, so our local complaints about our hub are quite minimal. But I don't believe that's the case from some of the competitors that are in the same business. They do operate off of major airports, and I'll let them address the type of complaints that they get. That's not to say that we don't have complaints, but certainly they are minimal when you compare them to what we get from the outlying stations throughout the country.

Mr. KUELPMAN. Mr. Chairman, there are two answers to your question from the United Parcel Service perspective. In Louisville, Kentucky, our main hub, there are over 40,000 people in the Ldn 65 contour area today, which is quite large, and we get very few complaints from the community with our operation. We employ over 8,000 people in Louisville alone just for our air operation. Most of our complaints are coming from the larger airports where we have one or two flights into them, such as Los Angeles, New York area airports, Minneapolis-St. Paul, et cetera.

Mr. COLE. From Burlington's perspective, we receive very few complaints overall. Any complaints that we would receive would be at the ends of our spoke. From our perspective, I think the reason it's relatively de minimis in the whole scheme of things accounts for the very few number of complaints that we do have.

Mr. OBERSTAR. A further question, Mr. Wiseman, both in your testimony and our conversation last week at a conference you addressed the matter of technology—hushkitting, re-engining and other technological advances to minimize noise and convert stage 2 aircraft to stage 3. Where do you think we are in the advancement of the state-of-the-art of technology in reducing engine noise and also air frame noise?

I think that's a factor not often discussed, but it is a significant factor, as I said earlier. If you shut off all the engines on an aircraft on approach, you'd still have measurable noise. But what advances are there that you see of bringing us closer to closing that gap without vast outlays of private dollars to convert aircraft?

Mr. WISEMAN. Well, our position is—and we have certainly done a tremendous amount of research into technology to get to where we are today through the development of our own hushkit—however, getting from stage 1 aircraft to stage 2 airplanes was not a major achievement, to put it in perspective. However, getting from stage 2 to stage 3 is a quantum leap in noise reduction.

Certainly, there are various methods, as we've talked about, to get to stage 3 through hushkits or re-engining and those types of things. However, high bypass engines is basically the latest state-of-the-art in noise reduction. We have been able to bring hushkitting to the latest state-of-the-art through our research in getting this noise down to stage 3.

However, we don't anticipate anymore quantum leaps in noise reduction, because it concerns us hearing airports talking about as soon as they get stage 3 implemented they want to talk stage 4. Well, I don't believe, nor does any of the hushkit manufacturers or the air frame manufacturers, that stage 4 is a viable alternative with any technology known today. That's not to say that it won't be developed down the road.

As far as air frame noise, we have been doing a lot of research into the air frame noise and air frame efficiencies of aircraft. We are developing some hardware as of this time, which we expect to flight test either late this year or the first of next year that will give some efficiencies to the air frame, and, of course, any efficiencies you add to the air frame will certainly reduce air frame noise somewhat. However, I don't expect quantum leaps in those arenas.

We're looking at three areas on the aircraft which we expect to enhance efficiency of the aircraft on the order of 7 to 9 percent, which is fairly significant. However, that, again, is not quantum leaps in noise reduction. You will never be able to totally eliminate air frame noise from a commercial airliner, in our opinion.

Mr. OBERSTAR. There are in fact, perhaps at least for the foreseeable future, some upper limits on the amount of improvement one can squeeze out of technology in reducing noise, and then you have to rely on other means—environmental modification, modifying flight paths, time of day, or modification of structures on the ground.

Mr. WISEMAN. That is correct. I think aviation has gone about as far as is technically feasible in airplane noise reduction.

Mr. OBERSTAR. Collectively, what do you estimate would be the costs for converting the cargo fleet to stage 3 under various scenarios? You heard the GAO testimony earlier, a very wide range of cost estimates. What do you think would be the cost for your sector?

Mr. ALTERMAN. Mr. Chairman, the only estimate we have came from a study that was done by the consulting firm of Leeper, Cambridge and Campbell which was published in April of 1989. That study indicated the cost of all cargo conversion, based on the assumptions made in that study, was approximately $15 billion.

Mr. OBERSTAR. What does that represent as percentage of cargo operation revenues over whatever period of time it would take to do that conversion?

Mr. ALTERMAN. That's a good question, Mr. Chairman. One of the other byproducts of deregulation was the fact that the data base on figures in the industry has sort of gone bye-bye, and if you think that you can get these carriers to share their figures with each other or anybody else, you're wrong.

Our study indicated, when we did get them all in the same room for about a 10-second period, that the all-cargo industry revenues for calendar year 1987 were in excess of $9 billion. Our guess—and that's all it is today—is that the all-cargo revenues today are in excess of $12 billion to $13 billion on an annual basis.

Now, I don't know how we calculate growth on that, but if you multiply that over a 10-year period for conversion—my math is getting worse as I get older—but about 10 percent of operating revenues, not assuming very large growth, or less than that if we grow a lot.

Mr. WISEMAN. Well, when you take that and tie it to what the return is, about 3 percent, it makes life quite difficult.

Mr. OBERSTAR. I will have further questions later.

At this point, I recognize the gentleman from Ohio.

Mr. MCEWEN. Thank you.

I have some questions that I'll submit for the record, and you may choose to respond to them. Basically, what I get from this is that you feel there should be a Federal preemption.

Mr. ALTERMAN. Yes, sir.

Mr. MCEWEN. And that you have a private right of action.

Mr. ALTERMAN. Absolutely.

Mr. MCEWEN. And how you meet the guidelines should not be mandated, that if you can do it with hushkits, you can do it with hushkits.

Mr. ALTERMAN. That's right, as long as we convert to the stage 3 standards.

Mr. MCEWEN. And that shouldn't be anybody else's business as to how you do it?

Mr. ALTERMAN. That's correct.

Mr. WISEMAN. That's correct. And when you consider that stage 3 noise rules are the same whether it's for a new airplane, a reengined aircraft or a hushkitted airplane, the rules are the same, same noise levels, so they shouldn't be really differentiating between how you get there.

Mr. MCEWEN. This discrimination that Mr. Kuelpman mentioned that you're hauling the freight in the belly of a passenger aircraft at one slot, and you're hauling it in a cargo aircraft at another. Should that be addressed in this legislation?

Mr. KUELPMAN. Yes. [Laughter.]

Mr. MCEWEN. Well, that concerns me. It really does. As you know, this is a tremendous improvement. All of us serve on the Public Works Committee and Transportation. Highways and bridges are clogging and backing up, and there have been quantum leaps in efficiency and in productivity in America in the 1980s, and a great deal of it has been because of fax machines and overnight delivery and the other things that keep us moving rapidly while we're waiting for other forms of communication.

I just had a fellow explain to me that on the construction site if he ran into a problem where something obviously didn't fit, it would take him two, three or four days to get it fixed, and now he sits there and goes back and forth on the fax machine right on the site with the architect in New York or wherever and fix it, and he said what used to cost him tens of thousands of dollars he can now fix often in an afternoon. That kind of increased productivity and efficiency I don't want to see discriminated against by somebody who has a preference for the type of interior in the aircraft.

Mr. WISEMAN. Well, we already are running into some of that type of discrimination, and a lot of airports relegate cargo aircraft as a second or third class citizen or even lower, and the way it stands today the passenger carriers certainly get the priority at any airport, and we're starting to see that in the airport restrictions on how much space is allotted to cargo for parking of aircraft on the ramp. It is getting extremely difficult at a lot of airports to even get the rights to park on a ramp.

In fact, one of the discriminations we're getting into is not only are airports coming up with odd noise rules, one airport was even attempting to discriminate by prohibiting any fixed space operation on the field from allowing a stage 2 airplane to even be on their ramp. So there's a lot of ways for discrimination to whoever it was—cargo carrier or whatever. So airports do need to be a little more even-handed.

Mr. MCEWEN. I would hope that you would be able to give us some suggestions as to how we would address that fairly. If we're going to do this, if we're going to take a bite at the apple, chances are we won't be doing it very often, and we need to——

Mr. WISEMAN. Well, we would certainly love to sit on a panel and assist anywhere we could to help develop rules and regulations which are not discriminatory.

Mr. MCEWEN. One final point. I don't know if I read it someplace else or if you said it earlier, but the ratio of the cost of re-engining versus hushkits—I think that ought to be in here someplace.

Mr. WISEMAN. Well, re-engining, of course, you heard the number batted around of $8 million to $12 million. A twin-engine airplane would probably run you in the vicinity of $8 million to re-engine, and, of course, a three-engine airplane would be in excess of $10 million for re-engining. You've heard numbers batted around on hushkit costs of from $1 million to $3 million. On the DC-9 aircraft, which we have developed kits for, depending on

which model of the DC–9 you're talking about, the kit price would range between $1.2 million to $2.25 million for the very highest gross weight and highest powered DC–9 out there.

Certainly, the first certification that I alluded to earlier on our hushkits is going to be $1.2 million and $1.5 million for a hushkit for the lower or middle gross weight type DC–9. That is a ratio of about between one-sixth to one-fifth the cost of the re-engining side of it.

Mr. McEWEN. Thank you.

Mr. OBERSTAR. The gentleman from Tennessee, Mr. Duncan?

Mr. DUNCAN. Thank you, Mr. Chairman.

Just a couple of questions. Where is the airport that you just mentioned that has prohibited stage 2 aircraft, just out of curiosity?

Mr. WISEMAN. The one that I mentioned?

Mr. DUNCAN. Yes.

Mr. WISEMAN. Oh, they didn't prohibit stage 2 airplanes, they prohibited all the operators on the field, fixed base operations, from allowing stage 2 aircraft to be handled on our ramp, which was Minneapolis-St. Paul.

Mr. DUNCAN. Well, all of you seem to agree that we need some type of Federal policy, but, you know, I have doubts as to whether we could come up with a good Federal policy that would fit all the different types of airports that there are. For instance, the situation at JFK that Ray McGrath is concerned about and others is certainly a lot different from Knoxville, Tennessee, where I'm from, and the airport is 15 or 20 miles outside of town in an area that's not real heavily developed. Now, how do we do that? I mean, you know, would you not admit that we have different situations at the different airports all across the country?

Mr. WISEMAN. I fully agree with you. I don't think any one policy is going to be fair to all; however, I think it's mandatory that we come up with a policy that's even-handed across the board. There may be some unfairness to both sides, whether it's the airline or the airport, but I think it's very important to come up with an even-handed policy.

I mean, you were faced with that situation with railroads and interstate noise and stuff, and you did set—I think, if I remember correctly—you set limits on it and said that the States cannot impose any stricter requirements on trucking than the railroad industry. I think we have to do the same thing. They're going to make noise no matter what you do.

Mr. DUNCAN. You say that this would create, you realize, some unfairness. Is the problem the same or as bad in the small town and small city airports as it is in these large city airports, or are we talking about primarily a large city airport problem here?

Mr. ALTERMAN. Mr. Duncan, I think that it depends on the airport. I don't think you can categorize it large city versus small city. It sort of depends on where the development has been in each of the communities. Now, when you've got a large city there's more development, so the likelihood of impact on citizens is probably greater, and to be perfectly honest, most of the restrictions that we've seen over the past few years have been large city restrictions, and they do play a large impact. But that doesn't say that

small communities might not have noise problems. It depends on——

Mr. DUNCAN. Well, of course, that's the point I'm trying to make. You have different situations in the different airports, and Thomas Jefferson or somebody once said, "That government is best which is closest to the people," and I know a lot of people disagree with that, but we've created a lot of problems in this country trying to impose rules and regulations from Washington that don't fit individual local situations. At some airports you would have a serious problem, but at other airports you wouldn't.

Mr. ALTERMAN. I would submit that that generality may very well be true, but we're dealing with something here that is unique, and that's the National Air Transportation System. While those problems do exist on local levels, the localities traditionally do not look at the National Transportation System. All they look at is their local problems, and that may be perfectly fine from their perspective, but what we've got here is a National Air Transportation System and a distribution system throughout the country.

What we're saying is there should be a policy which tries to quiet those airports, airports all around the country, without doing violence to the system, and I think you've heard from these gentlemen today that the system is beginning to crumble because of those local restrictions. And then the balancing act—and it's a high-wire act, I don't doubt that—but the balance that has to be made is somebody's got to make the balance and say, "Listen, we've got to preserve the National Air Transportation System while at the same time doing the best we can for the airports around the country."

I suppose the essence of compromise in drafting legislation is that maybe nobody's satisfied with it, but Mr. Wiseman has talked about the cost of putting hushkits on his airplanes, Mr. Kuelpman is re-engining airplanes at a cost of $400 million. It's very difficult for these people to tell their companies to make this multi-billion dollar investment in technology when they're not even sure that tomorrow the airports will let them operate stage 3 technology. It's a very tough call to make for a company. All we're saying is there's got to be some certainty in the system.

Mr. DUNCAN. Well, I certainly am sympathetic to companies to that have had to make large expenditures to alleviate this noise problem, and I just hope that if we formulate some legislation on this that it's flexible enough to take into consideration that we've got a big country here, and we've got a problem maybe at some airports and not at some others, and we need to have a little leeway or a little bit of flexibility, and I hope the local people don't just get left out of this process entirely.

Mr. ALTERMAN. If I might point out, in our written testimony one of the proposals in the Air Freight Association proposal for a Federal policy is a proposal that local airports with unique problems should be permitted to come and request permission from the Federal Government to impose restrictions not otherwise authorized because of their unique problems.

Mr. DUNCAN. Another problem that I see with so much of what we do here in Washington, we put in rules and regulations that only the big companies can comply with, and that drives a lot of

small companies out of existence in every line, and I certainly hope that we don't do that, because we're driving small business out of existence in this country by leaps and bounds, and I think that's a real problem.

Thank you very much, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman for raising those points.

Mr. Rosenthal, you raised something very interesting in your testimony about the various carriers that hold foreign carrier authority even though they are owned and controlled by U.S. citizens.

Mr. ROSENTHAL. There are some, Mr. Oberstar.

Mr. OBERSTAR. Is that legal?

Mr. ROSENTHAL. Well, it's a very tricky question, because their ownership is layered and hidden. I mean, the FAA has been investigating one group of Americans in Miami for 18 months on the basis that these airlines should be U.S. airlines, and, you know, we think we all know the answers that these gentlemen do own and control these foreign airlines, and I'm not privy to where the FAA investigation is going. Every time I ask, they say, "Well, we're still working on it."

Mr. OBERSTAR. So you have brought this matter to their attention, and the FAA is inquiring into it?

Mr. ROSENTHAL. Yes, the fact of the investigation is public. What they're doing isn't. They've issued an order and they've subpoenaed lots of things, and we complain at DOT all the time, and nothing happens.

Mr. OBERSTAR. Would you care to name those carriers on the record?

Mr. ROSENTHAL. It's public. It's public. The U.S. gentlemen are Frank and Berry Fine, a father and son. I believe the foreign carriers are InterAmericana and ALAS. I'm not sure if ALAS is being—I have the order in my office. I'll be glad to give you those names. I don't want to misrepresent them.

Mr. OBERSTAR. I know that's tangential to the subject of the hearing.

Mr. ROSENTHAL. Yes.

Mr. OBERSTAR. I couldn't help noticing it, because it is a matter of concern to me, and I think it's something we would want to pursue as well.

Mr. ROSENTHAL. I'll be glad to furnish that to you.

Mr. OBERSTAR. The question of private right of action of carriers to go to court on discriminatory actions of airport operators—are there situations, instances in which you have—any of you carriers or others—or you would like to initiate a right of action?

Mr. WISEMAN. Well, I'd like to address one situation which really sticks out in my mind that we ran into earlier with the earthquake in San Francisco, of course, significantly damaged a runway at Oakland which we operated out of, and this was going to cause very serious restrictions to payloads out of Oakland, which would have meant that we would have to operate two aircraft out of Oakland instead of one to service our customers.

We attempted to get with San Francisco, which I'm sure everyone has heard of the problems there, to say we would like to be able to operate off the San Francisco airport for three weeks only while the Oakland runway is being repaired. The airport manager

would not even talk with us, would not return a phone call, and when we called once and heard him talking in the background, he refused to even talk. "That is not my problem, it's your problem."

So this goes to show the crass that some airports have in "it's not my problem, it's yours," and we just think it was very, very inappropriate when we were trying to service the customers during the earthquake and keep the businesses operating, et cetera, for the airport to take that kind of an attitude. And our position is that we had absolutely no rights, no ability to do one thing about it.

Mr. OBERSTAR. That is shocking.

Any other members want to comment?

Mr. KUELPMAN. I just think there's a lot of things pending right now in the area of noise abatement and accesses such as Los Angeles, Ontario, things we hear out of the Port of Authority airports in New York and New Jersey, if in fact they put into place the noise rules that they're talking about doing, and, of course, FAA has gotten involved a little bit as has DOT out in L.A. with regards to what they are wanting to do by ordinance and have yet to accomplish and now are trying to do by policy.

I think even Airborne has requested information of counsel out there at Los Angeles with regard to how they intend to enforce the policy. I don't know if they have an answer yet on that subject. I think we're all very concerned about our inability to be able to fight any kind of a noise rule such as that.

Mr. ALTERMAN. Mr. Chairman, you know, I don't know where it's going to lead, and I know UPS and Federal are in the midst of negotiations, but the Orange County situation where cargo is excluded—it's not even on the basis of noise—cargo is excluded, period, and yet even if they wanted to go to court, and I'm not saying that they do, they'd be precluded from doing so.

Mr. OBERSTAR. What you're describing in response to that question is a very disturbing potential further development. From central Federal regulation of the economics of aviation we've gone to this plethora of local regulatory actions that serve a myriad of local interests and needs and concerns, all of them justified—I'm not minimizing them, they are justifiable concerns—and yet we are operating in an interdependent national economy.

The essential fact of economic life in America is that each part of the country is dependent on each other, and our transportation network is the one thing that binds the country together, whether on the ground or in the air or on the water. And if we continue down this path of multi-faceted local regulation, each of which may be at cross purposes to regulations and economic benefits to another part of the country, we will have undermined the commerce clause of the Constitution in the long run, which has been the great genius benefactor of both in America.

Our task, not any easy one, as Mr. Duncan aptly described it, is to fashion a policy of some kind that recognizes justifiable local interests but threads them together in a way that serves the national interest. That brings me to a question that you did not address, and that is the Federal role in ensuring that there are not incompatible land uses adjacent to an airport.

Our testimony, which I summarized earlier, on Tuesday distinguished between green field or rural area airports and airports

that are located in primary long-settled urban settings. There may be minimal opportunities for restraining land use in heavily urbanized areas and greater opportunities in rural areas. And then you have the dichotomy, however, of an airport authority or a local governing body that runs the airport but does not have the zoning authority for the restraint of land uses.

I'm sure you have encountered these problems, each of you, in your respective ways. You've described very well the costs and the technological benefits of making aircraft modifications to minimize noise. What about the land side, and what are your thoughts with respect to those questions I've raised?

Mr. ALTERMAN. If I could just comment briefly, the land side, in our opinion, must be part of the equation. You simply cannot solve the problem or even manage the problem—I'm not sure this problem will ever be really solved, but maybe we can manage it——

Mr. OBERSTAR. Manage it. Is that——

Mr. ALTERMAN. But I think that land side has to be a part of that. I think one of the reasons that you don't see these gentlemen and myself talking too much about it is, as I mentioned in my introduction, I've been on the task forces for the last four or five years that have tried to figure out a way to manage this problem, and I'm not sure that we're any closer today than we were five years ago, but we did go into detail on the land use side, and we've been back and forth on it.

One of the problems is that under State law and local law, our original proposal was to force local zoning jurisdictions to do certain things, and somebody did some legal research on it and discovered that probably isn't a very good idea, even if it's possible, to try to get everybody involved in local zoning restrictions. One of the proposals that was made was as part of a Federal policy to force or to mandate States to establish environmental compatible land use boards which would then oversee the compatible land use in local areas.

Whether that's possible from both a practical, legal and political basis may be one of the toughest problems. You know, I think you can encourage and encourage and encourage land use planning, and I think it's got to be done, but whether the Federal Government can go down to that local level and say, "You shall zone as follows around to create buffer zones," is one that we never could resolve in the four years that we've talked about it.

Mr. OBERSTAR. Does anyone else have anything?

Mr. ALTERMAN. I notice there is a panel that will be here from that committee, and maybe Don Reilly can talk a little bit more about that, but the impression I got is we finally threw up our hands on that, other than saying it's a good idea.

Mr. OBERSTAR. But you won't walk away from it?

Mr. ALTERMAN. Never. Never.

Mr. OBERSTAR. It has to be part of the——

Mr. ALTERMAN. It's part of the problem. You're not going to manage the problem with airplanes. I mean, we have seen success where there have been sound-proofing of hospitals and schools and homes. It's something that must be considered as part of the package. I think that one of the reasons that the gentlemen here today didn't deal with it is that their expertise is in the airline business.

I'm not sure whose expertise it is in sound-proofing houses, but it's certainly part of the equation, yes.

Mr. OBERSTAR. Mr. Wiseman?

Mr. WISEMAN. I've had a little experience in that. Like I say, we own the airport that we operate out of as our hub, and I have been working with local officials, both in the city and the county, trying to get zoning in place that would protect the airport adjacent areas from encroachment by such things as schools, residential, et cetera, in the various Ldn contours. I will say that it is an unbelievably tough battle trying to get that done, even in a small community where we do have a lot of influence.

I can imagine the kind of problems it's going to have at a major airport, and, as you all well know, that becomes a very political situation, and if you have somebody who's very powerful politically in the noise environmental area of an airport, he's going to have more influence than any 10 people who don't. So it is a very, very tough row to hoe to get any zoning in place that's going to protect an airport environment.

The only way it's going to come down, in our opinion, is that the Federal Government is going to have to mandate protection for certain Ldn contours on what can and can't be built in there, and the one thing that we even offered was we're not going to restrict you on what you can build in there, except for schools and churches, but if you build a resident in it, don't come complain about it. And I think part of that requirement would be that in all deeds the land in that area would have a statement in there that requires an aviation easement for anyone who decides to build in a noise impacted area around an airport.

You're going to have a major battle you won't win to prevent it from happening, but certainly you can prevent them from being able to have a voice in trying to stop what happens on an airport if they do go ahead and build in that area, and that aviation easement would be perpetual to whoever owns the property thereafter.

Mr. OBERSTAR. Thank you. Very good thoughts.

Mr. Kuelpman?

Mr. KUELPMAN. Mr. Chairman, if I might, I had a former life, and it was in the FAA back in the early 1970s in airport planning and design and prior to that in old laid out programs, and up until now nothing has really changed when it has come to use land use planning, and there has always been encouragement. There has been very little in the way of incentive.

I don't know what the right answer is, it is a very ticklish issue, but perhaps a greater amount of incentive in the areas of additional revenues available for those who do good land use planning. Indeed, it's a very difficult issue politically, but nothing really has changed in the last 20 years other than the fact that we are paying back now to many of those residences that have moved in.

I grew up in the Seattle-Tacoma area, and we're paying very heavily now for things that we didn't do back in the 1970s, although we had great encouragement, just like we do today.

Mr. OBERSTAR. Thank you. Very interesting observations. That gets us back to Mr. Duncan's observation things aren't going to be easy. We knew that at the outset. It is certainly going to be complex, but certainly your concern collectively as cargo operators is

that whatever is done not discriminate against cargo operations, which essentially, by their nature and the nature of today's freight and for the foreseeable future operations, are principally night time operations.

Mr. ALTERMAN. Yes.

Mr. OBERSTAR. And percentage of fleet requirements are not very fair. If you're only operating one aircraft, you can't reduce noise by 25 percent of one aircraft.

Mr. ALTERMAN. Mr. Oberstar, I think that's very true. Traditionally, if you look at the way that the industry operates, they operate the hubs, and certainly there's more than one flight at night to the hubs.

But the way the hubs operate is the planes go out from the hubs or in from the hinterlands, and there are typically only one or two flights—except at the major airports, the really major airports—a day at any one airport. So any percentage rules that are applied across the board hurt the cargo operators typically, in a general sense, more than they might hurt the passenger carrier who has 40 or 50 flights during the course of the day. Traditionally, we only have one flight to a city or maybe two flights to a city, so the percentage requirements of that city become much greater as a practical matter for the cargo carriers.

I would like to say it goes to more than discrimination. You know, we represent the cargo industry up here, and obviously we don't want to be discriminated against, but neither do we want to be placed in an equally bad position as the passenger carriers, and I wouldn't want to separate us too much other than to say that we really need to protect the system, and in order to do that we need a national policy.

Mr. WISEMAN. I'd like to add to that in that I don't think the United States is in a position to shut down the interstate highway system because a particular city doesn't want the noise from trucks, et cetera, passing through their city in the middle of the night, and I think the airline industry should be afforded the same protection that the highway system has. This country couldn't live with that type of restrictions, and I don't think we can with aviation, either.

Mr. OBERSTAR. GAO has reported that a de facto stage 2 ban could be enacted by the independent choice or decision of relatively few airports. How many might that be? Do you agree with that conclusion? Do you agree that just a handful of airports could stymie the whole system, and where do you reach that point of critical mass?

Mr. WISEMAN. Well, I think the GAO indicated they were talking about 12 major airports could effectively just about shut it down, and I think we pretty well agree with that. In fact, we think the number may be even smaller, because what happens, as indicated earlier, if we lose one city from our ability to operate, you're in effect cutting our throat in a lot more than that one city's markets, because we have an entire U.S. economy and not local economy in this industry.

Mr. OBERSTAR. Would you prefer to see a national uniform Stage 2 phase-out date rather than having continuation of individual airport decisions on curfews?

Mr. ALTERMAN. Absolutely, and this industry is prepared to go along with the date 2000. I think by the year 2000 we will have the fleets converted to stage 3 technology. Our problem is what happens in the interim and the problem of, as GAO said, the de facto moving up that date by putting on local operating restrictions. Part of our policy is to help the airport neighbors by getting the stage 2 aircraft out of the skies by a date certain, and I think we could live with 2000.

Someone once said at one of our meetings, "Well, what are you giving up? That's going to happen anyway," and the simple answer is that our planes, as GAO indicated, are operated much less than the passenger planes, and our stage 2 aircraft could economically and safely be operated well into the 21st century and would be, absent the noise debate. But we understand the reality of the world, and we're willing to get them out, but the problem is what happens between now and the year 2000, and that's a serious concern to us.

Mr. OBERSTAR. We have a curfew of our own. I had hoped to get to the next panel, but we must vacate this room, which is not a Public Works Committee room, by 12:25, which is in another three minutes.

In achieving a noise level, whether it is a noise budget for aircraft or for airports, I gather from your testimony you would prefer to have a standard set and allow each airline operator to choose the method of technology that would achieve that objective, right?

Mr. WISEMAN. Absolutely. As I indicated earlier, I was asked the question—I'm not sure you were here at the time—there is no difference between the noise rule of stage 3 between whether it's a new airplane, a re-engine or a hushkit. So if you comply with stage 3, it's the same noise level regardless, so it doesn't make any sense to say how you get there.

Mr. OBERSTAR. Well, we can take a lesson from our own experience in the full Committee on Public Works and Transportation on the water resources bill some years ago when, back in the early 1970s and late 1960s, the grand idea was to prescribe specifically for industries and municipalities the technology they must use to achieve certain levels of effluent reduction in BOD loadings.

Then we found technology and moved along faster than our prescription, so instead of prescribing that the industry or the municipality bake a three-layer cake, we have prescribed all the ingredients that should go into that cake and turned it around and said, "No, you go ahead. There may be some efficiencies in new technologies that we don't even know about yet," so we prescribed what the effluent should be and let industry and municipality decide how to get there, and I think that's a good lesson for us to apply to the noise situation as well.

On that note, unless there are any other comments from the panel, we will conclude and resume at 2:00 p.m. in 2167.

Mr. ALTERMAN. Thank you.

Mr. WISEMAN. Thank you very much.

[Mr. Alterman's prepared statement appears on p. 393.]

[Mr. Kuelpman's prepared statement appears on p. 452.]

[Mr. Wiseman's prepared statement appears on p. 527.]

[Mr. Cole's prepared statement appears on p. 419.]

[Mr. Rosenthal's prepared statement appears on p. 504.]

[Whereupon, at 12:26 p.m., the subcommittee recessed, to reconvene at 2:00 p.m., the same day.]

AFTERNOON SESSION

Mr. GEREN [assuming chair]. The Subcommittee on Aviation will please come to order.

I would now like to call Mr. Dale Warren and Mr. or Ms. Haight. I beg your pardon, your names are not on my list.

Mr. HAIGHT. Norris Haight.

Mr. GEREN. It's Norris Haight.

Mr. Warren, your full statement will be submitted for the record, and I ask that you summarize it in your testimony today. I appreciate very much your being here. Thank you for your time in preparing this testimony and making the time to be with us today and sharing your thoughts with us. You may begin when you're ready.

TESTIMONY OF DALE S. WARREN, VICE PRESIDENT, DEPUTY MANAGER, QUALITY, BUSINESS AND TECHNICAL DEVELOPMENT, DOUGLAS AIRCRAFT CO., McDONNELL DOUGLAS CORP., ON BEHALF OF AEROSPACE INDUSTRIES ASSOCIATION

Mr. WARREN. Thank you.

Good afternoon. I'm Dale Warren, and with me is Norris Haight. We are both managers at Douglas, and that's coincidental. The real reason we're here is as spokesmen for the Aerospace Industries Association.

Mr. GEREN. Could you pull the microphone a little closer? I beg your pardon.

Mr. WARREN. Is that better?

Mr. GEREN. Yes, sir.

Mr. WARREN. The real reason we're here is as representatives of the Aerospace Industries Association. AIA is a trade organization representing manufacturers of airplanes and their systems, including engines. I should point out our roles in the AIA. I am the chairman of a group called the Civil Aviation Council. One of the working groups in the Council is a noise group, and Norris Haight is the Chairman of that noise group.

We have a relatively brief statement today. One of the reasons is because this has passed the acid test of agreement by all members of the Noise Committee, and all the things they could agree to are here. I'd like to talk a little bit first about our estimates of the fleet size and its composition now and in the future, what we see as the future noise climate, some words about noise technology, and then we have some recommendations.

One of the key points is that we are very much in favor of the idea of a U.S. national noise policy, and soon. One of the questions that was asked in the solicitation was the dollar value of fleets as they stand today and as they're projected. Our evaluation is on a somewhat different basis than previous testimony. We see the stage 2 fleet as it stands today as an asset value of about $20 billion. In contrast, the current stage 3 fleet has an asset value of about $60 billion.

Another important number for perspective is that during the next 15 years we estimate that there will be approximately $240 billion spent on new stage 3 airplanes, and about 60 percent of that growth, the additional $240 billion worth of airplanes, will go for growth purposes, not for noise replacement purposes.

One of the things that's important is that there is a phenomenon labeled as a problem—the noise problem—and however you choose to call it is fine as long as we talk about the same thing. The concern relates, as we see it, to the fact that there are a significant number of stage 2 airplanes still in operation. I believe it's about 64 percent of the current operations are stage 2 airplanes.

Numerous studies have been done by several highly competent groups, and as a generality we have significant agreement with most of those. One of those was the FAA predictions made in the report that they submitted to Congress a year ago on the stage 2 fleet. One of the predictions they made was that there would be a 65 to 70 percent reduction in the number of people impacted by noise levels higher than 65 db when we get to an all stage 3 fleet.

Another important point is that there has been established the Noise Control Act of 1972 that has some principles in it that we feel must be recognized, remembered and adhered to as we follow downstream, and that is it's important that we consider both economic reasonableness and technological practicability in all the actions that take place.

A key point is that we feel that the stage 3 airplanes available today do incorporate all of the basic technology available. There certainly is room for improvement no matter where the starting point, and with the proper research there undoubtedly will be improvements in the technology. But at this point in time, there is no additional technology available for any substantial change in either the noise generated by engines or the noise generated by air frames.

This is a difficult pill for many people to swallow, and that's why we emphasize it, because people remember that some years ago there was a drive to upgrade the stringency requirements, and in response to that there were improved engines and reduced air frame noise. There is no such step improvement in performance in either of those areas as far as we can see at this point in time. We certainly support the idea that there needs to be some integrated, focused research on improving in both those areas, and there is certainly room to do that, but until that research is complete and there is some clear path to follow, there should not be any change in regulations or tightening of the stringency of stage 3.

We firmly believe that there needs to be a very careful balance of the desires of all the people involved. There's a very conspicuous group that would like to see less noise around our airports, and all of us can understand and appreciate that. Not quite so conspicuous and vocal are the airline passengers who need service, people who are dependent upon other services provided by the airlines, as well as the airlines themselves, which are a basic part of our economy. The whole system is fundamentally important to our economy and our future, and it needs to be treated with care and respect.

I think that some of the activities that have gone on in the last several years relate more to anarchy than order, and we are anx-

ious to promote the idea that some reduction in provincial regulations is important and that a national policy is needed urgently.

One of the issues is the stage 2 aircraft phase-out plan, and you've heard testimony about that. One of the latest groups to study that issue is the Aviation System Capacity Task Force Noise Working Group, and you'll hear from them next this afternoon. In general, we agree with their findings. They're not finalized for our purview as of yet, but the last reckoning point for us was we agree with their ideas. Roughly speaking, the idea of a year 2000 phase-out for stage 2 makes sense to us.

The idea of a simple ban on stage 3 operations relates to the issue of a centralized plan as different than local plans by individual organizations. Different people have quoted different ideas as to why the provincial activities are a problem. I personally, as a passenger and as somewhat knowledgeable of our system, feel like it's very unfortunate that a neighboring airport can hold hostage an airplane that could otherwise be available to provide better service schedules for me and other people. There are many aspects to that, and every one of them needs to be studied carefully so that we can have a more efficient and effective utilization of our national system.

I mentioned before that we feel that no change in the stringency of the stage 3 aircraft rule is appropriate, again for the reason that there is no technology available. As a generality, other activities, other approaches could be used. One is to change operations, and as a generality this leads to things like conditional fuel burn, possibly additional pollution, higher cost to the traveling public, more flights, and overall just not good solutions are available when we talk about increasing the stringency and changing operational procedures to accommodate them.

Very clearly one of the most important things that can be done is to more effectively use the land around the airports. As discussed earlier today, it's not an easy matter to talk about the airports that are already in place and the neighbors who are already in place. Certainly, one of the things that can be done is to avoid letting this problem grow by further growth of incompatible land use.

In summary, I'd like to make four points. The first one is that stage 2 aircraft currently dominate the number of departures and the noise climate at most U.S. airports, and there will be a major improvement in the noise climate when we have an all stage 3 fleet. The second one is within the next 15 years, large numbers of stage 3 airplanes will be added to the fleet, and stage 2 airplanes will either be retired or converted, and airline investments in those stage 3 aircraft is a very significant sum.

Third, no new noise reduction technology is available or foreseen at this time. New and intensive government-sponsored noise research is appropriate. Finally, an expansion of the U.S. national noise policy and appropriate legislation is needed to achieve a balanced treatment for an economical transportation system and for community noise environments. The key elements are stage 2 phase-out, a ban on stage 3 noise use restrictions, no increase in stage 3 rule stringency, and enlargement of land use compatibility problems.

We appreciate the opportunity to comment on this critical issue to our society, and we'd be happy to answer any questions.

Mr. GEREN. Thank you, Mr. Warren.

Mr. Haight, do you have a prepared statement?

Mr. HAIGHT. No, I do not, sir.

Mr. GEREN. Okay.

We've heard a lot about the noise attributable to the engines versus the noise attributable to the air frames. In a stage 2 and stage 3—just to give this layperson some kind of feel for how noisy just the structure is going through air—how much of the noise that's generated by a stage 2 aircraft or stage 3 aircraft is attributable to engine noise and how much comes from the airplane itself?

Mr. HAIGHT. Mr. Chairman, I think as was pointed out this morning, as the stage 3 technology has been incorporated into the new production airplanes, the relative strength of the air frame noise is coming closer to that of the engine noise sources, and it is not one fixed number, because it varies between different air frames, but it is getting within a few db in some instances to the point where, as also pointed out, that reducing engine noise by itself might not solve the problem.

Mr. GEREN. You're saying it could be roughly equivalent in some cases?

Mr. HAIGHT. I'm saying that it is a variable, and in some cases it could be within a few db, yes.

Mr. GEREN. All right.

Mr. Warren, you recommended that the Federal Government establish incentives to promote more extensive compatible land use programs around airports. What type of incentives do you have in mind?

Mr. WARREN. I must confess that both Norris and I come here as engineers. We're not really very much into the finance or real estate business. I was particularly impressed with the idea this morning that something along the line of land easements in advance would be a good practical move. One of the things we see in the Long Beach area is that the leverage available for the FAA to influence the local government is actually negative.

One of the options for the FAA might be to try to exercise some control over regulations at the Long Beach airport by threatening to withdraw airport support, and I think there's a certain part of the city council that would be delighted for that support to be withdrawn, because that would speed the elimination of the airport from the city area. It is a difficult problem.

Mr. GEREN. It is. I know in the Dallas-Ft. Worth area we have people who agree to live in areas that are affected by the noise and move in recognizing that, and then they change their mind over the years, and some of the concessions that they made going in end up being the subject of lawsuits later on. I was anxious to hear if you did have some particular thoughts, because that's something certainly airports all over the country struggle with.

The panel preceding you proposed that local stage 2 operating restrictions be prohibited until stage 2 aircraft are phased out. What are your association's views on this approach?

Mr. WARREN. We are concerned about the fact that there is inefficient use of a very critical national resource as a consequence of

the proliferation of local bans, and we're very much in favor of the centralized single definition of what the future looks like. You could say that our perspective is largely based on the fact that our customers need to know so they can plan their future, which is important to our business forecast. I'd like to think that we're a good citizen of our society and that we really interested in more than that. This really, as I see it, is not a fair way for us to do business. It is a national resource, and it should not be subject to local whims.

Mr. GEREN. Mr. Clinger, do you have any questions?

Mr. CLINGER. Thank you, Mr. Chairman.

Gentlemen, thank you for your attendance here today and for your testimony.

Mr. Warren, in your testimony you indicate that at the present time there is no foreseeable technology better than or potentially better than stage 3 aircraft. What has been the industry's experience with regard to noise regarding ultra-high bypass engines and unducted fans?

Mr. WARREN. We do have some basic experience in that. We flew an airplane with ultra-high bypass and unducted fan engines within the last two years. I think Norris can do a very good job of explaining the significance of that data.

Mr. HAIGHT. Mr. Chairman, yes, we did. As you may know, there were actually two demonstrator aircraft of the prop fan variety which were flown by McDonnell Douglas and also one by Boeing Company, and we did, of course, work very diligently with the engine manufacturers in terms of looking at the noise reduction capabilities for that type of aircraft, and the general conclusions were that the airplane certainly to be marketable would have to be and would meet stage 3 requirements.

Mr. WARREN. I would add a little bit to that. As a non-acoustician, the characteristics that I detected in listening to UHV is that noise that we normally are concerned about in landing, approach, take-off, seems to be naturally significantly less with the more modern propulsion system. However, there is introduced what may be another concern, and that is en route noise.

Mr. CLINGER. I'm sorry, what?

Mr. WARREN. En route noise.

Mr. CLINGER. En route noise?

Mr. WARREN. Yes, and that has been addressed by noise groups ever since this was discovered.

Mr. HAIGHT. That is correct.

Mr. CLINGER. One of the potential developments by the end of this decade would be the use of so-called tilt rotor technology, particularly for short haul operations, reducing the runways, the size of airports, et cetera. Have you done and do you know anything about what the noise implications are for tilt rotor? For example, the V-22? Or does anybody have any ideas about how serious a problem noise may be with the osprey or the tilt rotor technology?

Mr. WARREN. We haven't really gotten close to that problem.

Mr. CLINGER. Okay. With respect to aircraft noise produced by state-of-the-art stage 3 aircraft, can you quantify how much of the noise is caused by the engine, per se, and how much is caused by the air frame itself?

Mr. HAIGHT. For the current production of airplanes which are the stage 3 type airplanes, it is a variable. There is no one fixed difference between the engine noise and the air frame noise, because it varies from the different airplanes, different sizes of airplanes, and so it's not a fixed number.

Mr. CLINGER. Is there a rule of thumb that you can apply?

Mr. HAIGHT. Well, no, there's no specific rule of thumb. Of course, it varies, of course, among other things amongst the, as I say, size of the airplane, its configuration, its shape, its speed. There are a number of factors that enter into the amount of air frame that will be generated at any given time, but all I can do is give you a general situation to say that with the newer, quieter technology type airplanes, in some instances the airplane noise is close in db level to the engine noise.

Mr. CLINGER. All right. So that they're roughly equal contributors?

Mr. HAIGHT. Not equal. I think in general the air frame noise is slightly below the engine noise, but it's getting close.

Mr. CLINGER. Okay. Thank you very much, gentlemen.

Mr. HAIGHT. It does contribute to the total noise.

Mr. GEREN. I have no further questions. Gentlemen, thank you very much for appearing today. I appreciate your testimony.

Mr. WARREN. Thank you.

[Mr. Warren's prepared statement appears on p. 519.]

Mr. GEREN. Now I'd like to call the panel of Mr. J. Donald Reilly and Mr. Charles Bautz.

Mr. Reilly and Mr. Bautz, thank you very much for being here today and testifying before this committee. I have no preference. Whichever of you would like to go first, I'd be glad for you to. Could you please introduce yourselves? I don't know which is which.

TESTIMONY OF J. DONALD REILLY, CHAIRMAN, AVIATION SYSTEM CAPACITY TASK FORCE

Mr. REILLY. Mr. Geren, Mr. Chairman, and Mr. Clinger, I am Don Reilly. I serve as Chairman of the Aviation System Capacity Task Force during the course of the last year, and accompanying me on my right is Charles Bautz of Delta Airlines, who actually chaired the task force's working group on aircraft noise.

As a little explanation, the task force is comprised of 23 representatives of a cross section of the industry, and we have attached a list of these industry representatives to our testimony. In pursuing our efforts, the task force formed four working groups, and those four working groups included technology, Government rules, financing and aircraft noise. Our most recent task force meeting was held on August 22, and we presented our final report to Admiral Busey this last Tuesday, September 25. I'm pleased to submit a copy of that report for the record and now briefly review our recommendations dealing with aircraft noise.

Mr. Chairman, I certainly do applaud you and the subcommittee for taking these hearings on a subject traditionally enmeshed in a sea of parochial landmines, really. Discussions, while they have been compromised by opponents, have been very meager, and solu-

tions to date perhaps more harmful than meaning on the national basis.

It is the view of the task force that no one segment of the industry can resolve the noise problem alone. We need a comprehensive national solution to what is truly a national problem. We need a coordinated solution weighing the needs of the various parties involved. We need a legislative solution that will affect all portions of the solution at the same time in order to assure adequate equity and balance.

The task force believes that crafting a meaningful and balanced solution to the noise problem will require: One, responsible local noise restrictions; two, a phase-out of stage 2 low bypass aircraft; three, an ameliorating stage 2 aircraft non-addition rule; four, airline compliance reporting; and fifth, action to ensure appropriate land use programs around airports.

The objective of our recommendations is to reduce civil aviation fleet noise levels within a reasonably short period with definite cutoff dates for the stage 2 low bypass fleet, provide a balanced review of local aircraft noise operating procedures so as not to unreasonably constrain capacity, and, certainly, to ensure responsible land use controls around airports in order to abate further capacity restrictions and, as importantly, to permit needed capacity growth in the public interest over the next 10 to 20 years.

Our task force recommendations were submitted to the FAA Administrator earlier this week, first, with unanimous task force agreement as to the principles involved in addressing solutions to the noise problem, second, with task force consensus as to the specific noise solution details, and third, with two differing approaches for dealing with future local airport noise restrictions on stage 2 aircraft operations. The first emanated from our full task force meeting, and the second approach, which is Attachment 1 to our noise report, was presented by the airline members of the task force.

In summary, Mr. Chairman, the task force recommendations are as follows. Regarding reducing the fleet noise levels: One, stage 2 low bypass aircraft would be allowed to operate until December 31, 2003, provided the carrier can show by the end of the year 1998 a contractual agreement with a manufacturer for either replacement stage 3 aircraft or a hushkit re-engine modification to bring it into stage 3 compliance. Otherwise, the aircraft must be removed from service by December 31, 1999.

Two, any stage 2 low bypass aircraft on U.S. registry in domestic service that changes ownership or operation after December 31, 1998, must be modified to stage 3 certification status within six months, unless, of course, that aircraft is transferred subject to a valid modification contract. Three, stage 2 low bypass aircraft imported from non-U.S. registry sources and placed in either domestic or international U.S. service prior to December 31, 1994, must be modified to stage 3 by December 31, 1996. If acquired between January 1, 1995, and December 31, 1997, it must be modified to stage 3 by December 31, 1997, and if acquired after January 1, 1998, must be modified to stage 3 prior to being put into service.

Regarding local noise restrictions, one, notwithstanding the above-specified requirement dates I just enumerated, an airport op-

erator, as a local option, may ban operation of all stage 2 low bypass aircraft at its airports as of and after December 31, 1999, strictly as a local airport option.

Two, local airports would retain the right to establish local noise restrictions on all aircraft but with a Federal review approval process of restrictions applying to stage 3 aircraft. It is agreed that Federal review process standards for evaluating and improving stage 3 noise restrictions must be developed and include such considerations as justification of the noise restriction, effect on system efficiency and cost, effect on flight safety, alternate options, and, certainly, provide for some type of public forum. Further, if the Federal Government disapproves a proposed stage 3 restriction, the airport may not impose it, and in such cases the Federal Government would assume liability for damages resulting from the airport's inability to impose that particular restriction on stage 3 aircraft.

I wish to note here that the airline supported proposal that I mentioned previously differs from the above in that they feel the Federal review process should also apply to all new stage 2 noise restrictions, as well as stage 3 noise restrictions, but they agree likewise that the Federal Government should not have the authority to prevent local enactment of stage 2 restrictions, even after such Federal review.

Regarding airport land use programs, we fully agree that a locally controlled compatible land use program based on the 65 Ldn noise contour shall be established at airports. The program goal should be to protect the stage 3 noise area to the fullest extent possible through such actions as compatible zoning, noise easements, land acquisition, sound-proofing, and other appropriate means. We feel Congress must develop appropriate incentives to encourage local participation in order to carry out these land use programs.

Lastly, regarding compliance, one, all airlines should file an initial report with the FAA by December 31, 1991, showing how they will meet compliance dates. Such annual reports would be discontinued by the airlines after the carrier has achieved a 100 percent stage 3 operation. Two, there would be no exceptions allowed to compliance requirements for the stage 2 low bypass phase-out or for non-addition rules.

Mr. Chairman, that ends our statement, and the full text is submitted for the record.

Mr. GEREN. Thank you, Mr. Reilly.

Mr. Bautz, do you have a statement?

Mr. BAUTZ. I would like to clarify one aspect of this program. First of all, I want to make sure you understand I'm here as Chairman of the Noise Working Group, and any comments I would make are based on my association with that group of people, which was a wide variety of interests.

The two options for local noise restrictions reflects a difference of opinion within the Noise Working Group as to where the group was at that particular time. It really is not properly characterized as an airline input. The airline group thought program was different than it turned out to be in the final write-up, and that's where that came from. That's all I have.

Mr. GEREN. Mr. Reilly, your task force did not recommend a total Federal preemption of stage 3 restrictions but rather prior

Federal review before these restrictions are imposed. What are the pros and cons of a ban on stage 3 restrictions?

Mr. REILLY. Well, certainly, the pros are that you're going to be able to permit a lot more capacity at any one particular airport. The cons are, as the airport segments would respond, that the airport operator is between a rock and a hard place. They're trying to provide as much capacity for an efficient, effective airline system in their community as possible, but they're also faced by the myriad of local noise opponents, political and economic and otherwise. In many cases, some airports will state that in order to maintain a viable airport that they will have to address some aspects of even stage 3 aircraft at some airports. That is basically the argument they come through with.

Mr. GEREN. A concern that's been expressed today and other times is that if your recommendations were adopted, if the Federal Government did prevent an airport from banning stage 3 aircraft, what kind of liability the Federal Government might subject itself to. Could you comment on that?

Mr. REILLY. Well, I'd suggest, Mr. Chairman, that as a practical matter there may not be as much substantial level of Federal financial liability accruing with Federal rejection of a local noise restriction on stage 3 aircraft. First, most major airports have been working for years at protecting the environs of their airports through land purchase, purchase of aviation easements, relocation of significantly noise impacted residential areas and sound-proofing, and supporting stronger zoning.

Second, I think that most would agree the amount of noise litigation has decreased substantially over the last five to 10 years. Third, I think that the land use program being advanced by the task force is aimed at trying to protect the full area of 65 Ldn. When we eventually do end up with a full stage 3 noise fleet, we're going to be down to that type of a footprint. Hopefully, we will have been able to, through a number of different measures and through a good land use program, have protected most of that footprint of the stage 3 aircraft.

So I don't think there's going to be as much potential liability out there as one might imagine. The true answer is, certainly, though, yes, if the Federal Government were to prohibit the stage 3 noise restriction that under the task force recommendation the Federal Government should pick up the liability associated with only that for the stage 3 aircraft.

Mr. GEREN. Did your task force consider whether there are any changes needed in FAA's method of measuring noise?

Mr. BAUTZ. Yes, we did, and we came to the conclusion that the Ldn 65, where there is controversy about that noise measurement, is the best thing we have and the only really good form to establish a land area from.

Mr. GEREN. All right, thank you.

Mr. Clinger, do you have questions?

Mr. CLINGER. Thank you, Mr. Chairman.

I thank you gentlemen for your testimony today. In looking at the membership of the Aviation System Capacity Task Force, I don't see listed there any of the all-cargo carriers such as UPS or

Fed Ex. Can you tell us how they might view the recommendations which you have presented to us today?

Mr. BAUTZ. The task force is the overseeing body, and that was appointed by the FAA Administrator. The Noise Working Group is where all the argument took place, and that group was a much larger, bigger cross section. It did have air freight, it had a number of airlines, it had airports, it had local groups, it had the League of Cities Noise Group, we had manufacturers and the whole gamut of people in there. So where the debate was actually going on did include, as far as to the best of my ability to manage that, everybody that was involved.

Mr. CLINGER. So are you saying that they basically would agree then with the recommendations that you're making?

Mr. BAUTZ. The end product is a detailed compromise. You have to give something to take something. I think probably in the end I would have to say that we may have no agreement at all, but it is based on trying to take an element from one area and putting an element in another area.

And it was participated in quite closely with everybody involved.

Mr. CLINGER. This is roughly, then, a consensus recommendation but not necessarily a unanimous set of recommendations. Is that fair to say?

Mr. REILLY. It's certainly not a unanimous recommendation, because everyone came from different views. We all live under the same sky, but we each have a different horizon, and obviously, in an effort to try to bring the industry together to bring forward a program, we all made compromises. From listening to the small package airline testimony this morning, I was very pleased to hear them say that they could live with the year 2000 if it was at local option.

I think that probably the primary difference is local noise restrictions on stage 2 aircraft, and, of course, that does phase even some airlines—the weaker financially airlines. But we've got to recognize that there are a number of airports out there under tremendous local political pressure that are going to be moving forward, and I think that we're all looking to come up with some type of a uniform national solution that will head off an expanded patch quilt here of local restrictions. And I think this is why it's so very important that this committee at this time is looking at this subject.

Mr. CLINGER. You mentioned the potential impact on financially weaker airlines. Did you give consideration to that and have any sense of whether or not some carriers would be able to afford the new aircraft within the time parameters that you've set or how many might be actually forced out of the industry because of the requirements?

Mr. BAUTZ. Every element of this is a contentious issue. The final recommendations don't serve anybody's prime objectives. Yes, there were objections from the ATA. They have throughout this whole thing objected to the year 2000, and I think they have now said sometime between 2000 and 2005 might be okay. But, again, it doesn't serve anybody's purpose, and it represents a tremendous compromise.

Mr. CLINGER. Did you make any recommendations as to what role perhaps the Federal Government might play in facilitating the move to stage 3, such as tax incentives or any kind of incentive programs—accelerated depreciation, tax credits, or whatever? Is that part of your recommendations?

Mr. REILLY. In some of our earlier discussions, Mr. Clinger, we probably discussed all of those plus 20 others. I think we're realistic enough to be looking at the current budget problems and recognizing that should we come forward with a proposition like that, we'd be laughed out. I would say, though, that where Congress could look at incentives, either positive or negative—positive in a financial way, or negative in a withholding way—is trying to enforce the States to provide the types of adequate land use zoning that we do need around airports.

One of the biggest problems with this or any other proposal that's going to come before you is that unless we can stabilize the land use zoning around airports, the land uses around airports, no program is going to survive for very long. We've seen this at the DFWs, the Dulles Airport, where tremendous green areas were purchased at one time, but then you have zoning boards that will come in later on, often under political pressure by developers, and the high-rises go in and the residential communities go in.

We definitely need some type of incentive, and I would hope that perhaps that's where you might think of some of your financial candidates on getting the States to put in meaningful land use.

Mr. CLINGER. Gentlemen, I thank you very much.

Mr. GEREN. I'd like to thank, each of you for your testimony today. I appreciate very much your taking time to be with us.

Mr. REILLY. Thank you very much.

Mr. BAUTZ. Thank you.

[Mr. Reilly's prepared statement appears on p. 490.]

Mr. GEREN. Now I'd like to call Mr. Loren S. Simer, President, National Airport Watch Group.

TESTIMONY OF LOREN S. SIMER, PRESIDENT, NATIONAL AIRPORT WATCH GROUP

Mr. SIMER. Mr. Chairman, members of the committee, I'm sorry Congressman Oberstar isn't in here, because I'd give him greetings from Minnesota.

I'm Loren Simer from Minneapolis, and I'm here to discuss the proposed legislation giving the FAA exclusive power over aircraft noise control.

Mr. GEREN. Mr. Simer, excuse me one second. Mr. Oberstar is expected to be here in a few minutes, and if you would like to defer and come back after the next panel, I'd be glad for you to do that if you just choose to do that.

Mr. SIMER. Well, I'll go through this, and if I see the Congressman, I'll give him my personal greeting.

Mr. GEREN. All right.

Mr. SIMER. Thank you.

I'm speaking today on behalf of the Minneapolis South Metro Airport Action Council as well as the National Airport Watch Group, a national coalition of local anti-noise organizations. The

National Airport Watch Group coordinates the efforts of grass roots citizens organizations in 21 states around such airports as Chicago O'Hare, St. Louis, Dallas-Ft. Worth, Boston, Washington, DC, Milwaukee, Detroit, Nashville, Oakland, Seattle, Newark and Phoenix and some others.

All of these groups, plus the National League of Cities, share my concern over the recommendation of the FAA's Aviation System Capacity Task Force that you just heard about. No doubt your committee has copies of their report dated August 22d, which the FAA is using to shape its proposal for Congress. I understand that's been revised, but there are no copies of the revisions around.

Few would disagree with the phase-out of stage 2 aircraft by the year 2000, but the proposal to remove local power to regulate the use of stage 3 aircraft is completely and utterly rejected by the organizations I represent and should be rejected in total by this committee. If we are to have an all stage 3 fleet in the 21st century and the FAA is given veto power over legal local noise restrictions, what authority remains in the hands of the airport proprietor? Are parking fees and gate rentals to become their major concerns?

The principal of a single Federal agency imposing standards of noise regulation is wrong-headed and unsound. A child can recognize that specific cities have specific unique problems that local authorities, in response to local needs, are best able to understand and address. The picture of a universal noise regulation serving geographically distinct districts as Boston, Chicago and Tacoma is patently absurd. It is precisely local regulations and addressing local needs that are best suited for this issue, not the revocation of power to impose community standards for a community problem.

Aircraft noise affects local communities. Local communities have a stake in commercial aviation. Local authorities are best poised to strike the necessary compromises involved in the aircraft noise issue. Local ordinances worked out through difficult negotiation and compromise at the community level and custom-fitted to the specific community needs would all be abrogated and annulled if the recommendations of the task force are accepted.

The FAA would be the sole authority for airport noise restrictions. This would be turning the clock back to zero in terms of workable solutions. For example, many airports today, due to pressure from community groups, have imposed flight curfews or restrictions on night flights to reduce the impact of late night noise disturbances. Even the FAA considers night flights 10 times as irritating as day flights. The recommendations of the task force include annulling these noise curfews, but is it realistic to suppose that the number of night flights tolerable in Chicago are acceptable at Washington National? Why should local ordinances produced by local authorities expressing local tolerance levels be overturned? This is absurd, counterproductive and retrogressive.

For these reasons, the recommendations have the support of the industry-dominated task force, and for the same reasons our many organizations reject it. The same point can be made against the proposal of the task force to give the FAA veto power over local communities noise ordinances. Only the airlines support this proposal. It is self-evident why this is so. Which voice is heard loudest on the Federal level—a national airline corporation or the afflicted

residents of, say, Orange County, California, or Louisville, Kentucky? What would be the FAA's most likely focus of concern—Northwest Airlines or the Highland Park neighborhood of St. Paul?

Another point needs to be mentioned. There's been a lot of pussyfooting around this one today. If the proposals are acted upon and the FAA becomes the sole regulating authority for noise at the airport, the Federal Government will be exposed to costly lawsuits seeking to address the many aircraft noise pollution cases across the Nation. This kind of legal exposure should seem like doubtful policy to a thoughtful Congress.

The proposals of the task force to enhance the FAA's power at the expense of local authorities must never be allowed to take effect. It is extremely awkward to picture the FAA acting in support of community noise concerns against the ambitions of the Nation's airlines. The FAA was created specifically to enhance the Nation's airlines and encourage more air travel, and they have succeeded. Expecting it to do otherwise than to side with the airlines would be idiotic, yet it is precisely this idiocy the task force expresses as the best solution to the noise regulation question.

Having a higher opinion of the good will and intelligence of the committee than the task force apparently does, I urge you to reject anything like the task force recommendations. Thank you very much for the chance to speak on this issue, and I'd be happy to handle any questions.

Mr. GEREN. Thank you, Mr. Simer. You mentioned one example of a different need that one community may have over another, comparing the concern that residents around Washington National might have compared to the concerns people in Chicago might have about night travel. Could you give some other specific examples of differences in local communities that would justify having this patchwork quilt of regulation that you believe is the best approach?

Mr. SIMER. Well, we're not talking really about a static situation. As you know, in many airports in the last year or two years, the 65 Ldn boundaries have been growing, not so much because there are more aircraft but because they're scheduling more planes at night. In some communities where there is an increase in night flights, the pressure is on to restrict them entirely. It was mentioned earlier today that there's such a restriction at Orange County, and there are such restrictions in other California airports, and there is definitely a move on to restrict them in Seattle.

Mr. GEREN. Let me rephrase my question. I would think that it would be equally offensive to have an airplane fly over your house at night if you live in Orange County as it would if you live in Washington, DC. What I'm trying to get at is what are some differences perhaps between Orange County and Washington National or O'Hare and DFW—whatever you want to use as examples—that would cause problems with a Federal plan that may be uniform standards?

It seems to me the night flight would be equally a problem regardless of where you are, and a Federal regulation would lay equally heavily or lightly on every community in the Nation, because most people are asleep at night. But what are some specific

examples of problems you would see if we had a Federal program, perhaps some local needs that a Federal program would not be well-suited to recognize?

Mr. SIMER. Well, nobody likes night flights. Everybody likes to sleep nights, and I'm not going to tell you that night flights don't disturb people at O'Hare as much as they do in Washington, but in some communities they have established as a method of controlling night flights ceilings on how many night flights can occur. That's true in Minneapolis. I don't know every other place it is true, but I know it is true at other airports. If you're going to put a Federal standard in—and it doesn't matter whether there's a dozen night flights or 50 night flights or 100 night flights—if you're going to allow any, you have to allow them all. This is what the problem is with a Federal standard.

Mr. GEREN. Well, are there any examples other than night flying which raise concerns with you? I may not be making myself clear. For example, if there was an airport that happened to be in the middle of a dairy region and these airplanes were keeping the cows from giving as much milk as they would otherwise, to me those are circumstances that perhaps that local city council could address better than the FAA in Washington. Are there other local concerns that you believe might be overlooked if we had a uniform Federal policy, such as dairy cows or chicken farms or whatever else you want to—and I just throw that out. I'm not suggesting that there are examples of that, but just in order to make my question clearer. I recognize the problem with night flying, but what are some other local concerns that you think the FAA may not take into account?

Mr. SIMER. Well, I think in the last testimony you heard this afternoon, you heard that they're intending to increase the fleet by 40 percent regardless of replacing them. This is an increase in the actual fleet number of planes flying. This means an increase in the actual number of planes flying. This means an increase in the noise. I don't care how you slice it, stage 3 planes make just as much noise landing as stage 2. Stage 3 are quieter only on take-off, and some places it's the landing of airplanes that creates all the problems. That's true in Minneapolis where the planes generally land over the city of Minneapolis and take off over the Minnesota River Valley.

But you're talking about a growing air travel, a growing fleet of airliners, and we seem to be concerned with this euphemism that they call a national noise policy. Really, this is only a policy to enhance airline profits. It will be an environmental disaster if it ever takes effect.

Mr. GEREN. All right.

Mr. Clinger, do you have any questions?

Mr. CLINGER. Thank you, Mr. Chairman.

In your testimony, Mr. Simer, you say that few would disagree with a phase-out of stage 2 aircraft by the year 2000. What impact do you think that's going to have on some of the financially weaker carriers, and should Congress be concerned about whether or not they survive?

Mr. SIMER. Well, the financially weak characters are not weak due to any act of Congress, and probably whether they survive or

not will not depend on any act of Congress. I can't believe that Congress should be concerned primarily with protecting the inefficient.

Mr. CLINGER. I'm not saying primarily, but isn't it something that should perhaps be weighed in the balance and taken into consideration, if in fact it's going to result in the disappearance of a fair number of competitors?

Mr. SIMER. Well, I certainly don't want to see competition lessened, but unfortunately it's been the trend in the past two or three years, and there are a couple of weak airlines more or less for sale now. Whether any of this legislation gets passed or not, it will still be the trend, because as money is expensive now, profits are not automatic. I think that naturally Congress should be concerned over unduly burdening the weak, but I don't think Congress can save the weak if they're weak enough by whether it does or doesn't do something.

Mr. CLINGER. Okay. If we're going to mandate that the airlines all must be converted to stage 3 aircraft by a time certain, that's going to be a rather large investment they'll have to make. Shouldn't we perhaps have some sort of a carrot there that says, okay, if you convert and we have all stage 3 aircraft which, you know, establish a certain noise level, shouldn't they at least be able to be free from local inconsistent ordinances, requirements, and restrictions and so forth that are going to further impede their ability to really operate their fleet in the most cost effective way?

Mr. SIMER. If you think that somebody here in Washington can set up noise standards that are sensible for all of the major airports in the country, then you're absolutely right. But I don't believe that is possible here. I do not believe that the FAA, whose responsibility it will be, is very concerned, has never been very concerned with environmental matters, and I can't believe that the influence of the airlines to ride roughshod over everything.

Now, here's an industry that accepts no responsibility for its own pollution, either noise or the chemical pollution it causes. They ignore it entirely, but the FAA thinks that they have got to be enhanced by any means possible. I can't see the FAA worrying much about the environment. I hope I'm wrong.

Mr. CLINGER. And that may be Congress' fault, you know, that we have not really charged them to be responsible for safety and also for promotion of air travel. Some argue there's an inconsistency there.

Mr. SIMER. And eventually you environment in, too, didn't you?

Mr. CLINGER. Yes, but I think that was an afterthought, so perhaps it hasn't received the emphasis that it should have, and that may be partially our fault. Just one final question. When we created Dulles Airport, that was partially, at least, in response to concerns about too many flights in a heavily congested air space here in the Washington Capital area, and so we moved out into the wilds of Virginia there to build the airport, and yet because the airport is there, that tended to attract people to come in there. There are now objections to that.

Should the Federal Government perhaps intercede here in terms of land use planning? You heard some of the testimony before that suggested that it should be a Federal role to provide incentives, at

least, for local governments to have land use planning so that if you come after the fact, your rights would be more circumscribed than if you were there to begin with.

Mr. SIMER. I think in future new airports—you're not building Dulles today, but if you were—you could use the techniques that they are using in Denver on the new Denver airport. What they're doing there, the airport itself condemns the land for at least three miles in all directions around the airport, owns it for five minutes, and turns it back to the owners less the residential rights.

The current owners can live there as long as they live, but they can't sell it as a residence. They can farm it, they can sell it as industrial, commercial, motels and whatnot, but they can't sell it as family residences. This is much better than zoning. In San Francisco, they had zoned the mud flats for five miles south of the airport, but there are a lot of jurisdictions, and after the councils changed a couple of times, all of a sudden the zoning got changed, and now they're building housing on the mud flats.

You've got to leave that land control in the hands of the airport, because local counties and cities, the councils change. Sometimes a developer can find a way around a new council. If the airport owns the residential rights for the buffer area, then anything that happens there as far as a residence, the airport has to approve it ahead of time.

Mr. CLINGER. That's an interesting concept. Thank you, Mr. Simer.

Mr. GEREN. Mr. Simer, thank you very much for your testimony today.

Mr. SIMER. Thank you.

Mr. GEREN. We'll pass your regards along to Chairman Oberstar.

[Mr. Simer's prepared statement appears on p. 514.]

Mr. GEREN. I'd like to call the next panel, Captain Henry Duffy, President, Air Line Pilots Association; Mr. Stanley Green, Vice President and General Counsel, General Aviation Manufacturers Association; and Mr. Jonathon Howe, President, National Business Aircraft Association.

Gentlemen, thank you for being here today, and your full written statement will be submitted into the record. I'd appreciate your summarizing your comments now, and you may proceed in whatever order you choose among yourselves.

TESTIMONY OF CAPTAIN HENRY DUFFY, PRESIDENT, AIRLINE PILOTS ASSOCIATION

Mr. DUFFY. Thank you, Mr. Geren. On behalf of the 42,000 pilots that ALPA represents and 50 airlines in this country, we appreciate the opportunity to testify on this very important subject.

Approximately 10 years ago, ALPA began to present the pilots' viewpoint about the relationship of aircraft noise problems and airport capacity. We knew that since the passage of the National Environmental Protection Act of 1969 only one air carrier airport, at Ft. Myers, Florida, had been planned and built in the entire United States, despite the ever-increasing growth of the air carrier industry. We were also aware that runways at some airports were being closed to air carrier use because of noise sensitivity, while the use

of other runways was being restricted for noise reasons in spite of the ever-increasing demand for increased capacity at those same airports. Our observations detected an alarming trend.

Deregulation further exacerbated the problem by doubling or even tripling the usage of these decreasing numbers of runways, and the results have been predictable. Because we can only squeeze so much out of the system, operational safety-related problems have increased. In-trail final approach spacing limits have gradually been decreased from three to two and a half miles. Because of the lack of adequate airport capacity, discussions are underway to reduce that spacing even further.

At San Francisco, air carrier aircraft are flying wingtip to wingtip formations to land on parallel runways spaced as closely as 750 feet. We've had difficulty in expanding airports, let alone building new ones. The new Denver airport will be a first, but let's not fool ourselves. That new facility is slated to be a replacement for the existing Stapleton Airport, not an additional airport for the National Air Space System.

In an effort to respond to local community noise complaints, the Federal Aviation Administration and the airline industry developed part 36 of the Federal Aviation Regulations. This regulation contains aircraft noise standards that classifies aircraft in the categories of stage 1, noisy, and stage 2, less noisy. Further, a third category was described that challenged the industry to create quiet stage 3 aircraft.

Billions of dollars have been spent in developing and manufacturing these stage 3 aircraft, and today we see only the manufacture and sale of quiet stage 3 aircraft for airline fleets. Yet pilots flying these airplanes, many that are at least 10 times quieter than most stage 2 airplanes, are being forced to fly using marginally safe flying techniques mandated by local noise management schemes at some airports.

Efforts by airports to address their local noise problems have fostered an increased variety of schemes to solve these problems. Many of those schemes affect the safety of the traveling public and, of course, the safety of pilots. Some of these proposed schemes are unsafe and should not be permitted. These require procedures that combine extremely steep climb angles and deep reductions of power while flaps are still creating drag and leave our pilots with precious few alternatives if something unexpected happens.

Sudden engine failure is presumably accounted for with the engine-out climb gradients that must be established at any take-off procedure, yet we have found procedures designed and enforced that seem to ignore those limits. Some airports have limited any stage 2 operations to day light hours with no restrictions on stage 3 airplanes. Other airports have simply eliminated stage 2 operations altogether, a difficult proposal since insufficient numbers of stage 3 airplanes currently exist to satisfy the needs of the industry.

Now we even have an airport defining categories of stage 3 aircraft and allocating access to its facility by standards that are far beyond any Federal requirement. At California's John Wayne-Orange County Airport, Federally recognized stage 3 airplanes are further divided into three categories. These categories are based upon combinations of gross weight, passenger capacity, and noise

emissions at specific airport noise monitors. Measurements at the monitors are calculated from single event averages rather than the Federal standard of day/night average sound level, or Ldn.

Airport availability and interstate access are being controlled by these local standards. Pilots are forced to fly the non-standard procedures that are mandated by the local airport authority and the success or failure of their performance determines the allocation of each company's slots which are necessary for the company to serve that airport. In our opinion, the competitive atmosphere of such a program absolutely flouts safety standards.

The proliferation of noise programs that advocate non-standard procedures has raised concern in our industry. ALPA and other aviation organizations, at the FAA's request, are involved in an operational engineering study to design and validate safe and standard noise abatement procedures that may be applied to all air carrier airports. Should we be successful in developing such a program, the operational gymnastics now being performed with our aircraft at some airports we serve would be moderated, yet quiet operations could continue. Operations, regardless of location, would then be similar, and standardization, one of the best aviation accident prevention tools, would again be available to air carrier pilots.

Parallel to this operational study, the Aviation System Capacity Task Force, an aviation advisory group to the FAA Administrator, and a Noise Working Group of that task force have reached consensus on the issues of airport noise and future noise policy. As one might expect, this consensus has been very difficult to achieve. In spite of efforts to avoid controversy, the parochial interests of each of the organizations have been difficult to overcome, and full agreement seemed at times impossible.

This Noise Working Group has recently made a recommendation that the FAA Administrator may take to the Department of Transportation for a national noise policy. Each organization had to relinquish something felt to be extremely important to its cause, but safety was not an item that was considered for compromise. We are hopeful that the final product will allow an acceptable program to phase out older and noisier airplanes, the development of acceptable safe and standard operational procedures at all air carrier airports, the ability to construct new airports or runways wherever they might be necessary to improve the system, and sufficient capacity overall to meet the growing demands of the traveling public.

In summary, I believe that we need a national noise policy that mandates the safe and definable quiet operation of our National Air Space System but allows that system to function. The FAA must be given the authority to standardize departures in favor of safety before the proliferation of non-standard and risky procedures becomes uncontrollable. The FAA should also be given the authority to prevent restrictions to stage 3 aircraft operations beyond those already specified in Part 36 of the FARs.

Stage 3 aircraft, by definition, already meet the Part 36 requirements, and some of the restrictions being applied reduce the safety of the operation of those aircraft. And, finally, if legislation is the only vehicle with which a noise policy can be implemented, then we obviously need your help in writing that legislation. Thank you, Mr. Geren.

Mr. GEREN. Thank you, Captain Duffy.

Mr. GEREN. Mr. Green or Mr. Howe, I don't know what your preference is.

TESTIMONY OF JONATHAN HOWE, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSOCIATION

Mr. HOWE. Thank you very much, Mr. Chairman.

I'm Jonathon Howe, President of the National Business Aircraft Association, and I'd like to just briefly summarize our testimony today, which has been submitted for the record.

First of all, let me echo most of the same sentiments that Captain Duffy has expressed and expand on a couple of areas of particular concern to us. First of all, it will come as no surprise to this committee that we believe that noise is the greatest single constraint on capacity in our National Air Transportation System today and that if we can solve the problem of a lack of uniform noise standards and the fragmentation of airport individual rules that Captain Duffy referred to, we will open up precious capacity in our already overstrained system.

I should also commend both houses of Congress for, I think, having the courage and the wisdom to finally address this important issue. This is an issue that has been around for a long time, and I am simply delighted to see both the Senate and the House with pieces of legislation that will go a long ways toward addressing this issue. And I would have to say that this is with the apparent reluctance of the Administration and its national transportation policy to address this issue. So we hope that this will provide the necessary encouragement so that this country can have a true national noise policy.

Let me turn to a couple of specifics which I expand upon in some detail in my testimony and just summarize those briefly. First of all, one of the most important and perhaps one of the most controversial elements of a national noise policy is the so-called stage 2 ban or stage 2 phase-out. In general, we agree that a stage 2 phase-out, a phase-out of the older, noisier aircraft in the fleet, is appropriate as long as it is done in a reasonable, methodical way, and the dates that both the United States and the International Civil Aviation Organization have been talking about of a phase-out beginning in 1999 are generally agreeable with our operators.

It's important, however, that recognition should be given in that to the fact that aircraft weighing less than 75,000 pounds, and this is the predominant aircraft that are used by business and corporate operators, even though they may be certificated under stage 2, they in fact already meet or exceed the noise levels of many stage 3 aircraft, and we believe that the example that already the European community has set and which the United States will adopt in its position before the International Civil Aviation Organization of exempting aircraft weighing less than 75,000 pounds should be included in any stage 2 ban or stage 2 phase-out. In fact, I am delighted to observe that in Senator Lautenberg's bill recently introduced in the Senate, the Aircraft Noise Reduction Act, there is a specific provision that does in fact do exactly that.

I must also state that although a phase-out of stage 2 aircraft after 1999 is generally acceptable, we are greatly alarmed by the proliferation of early stage 2 bans at many airports throughout this country and other parts of the world, and indeed, of course, many of these airports do not stop with a simple stage 2 ban. Captain Duffy has talked about a couple of horror stories. I can simply top that by mentioning another California airport at Long Beach that has current noise restrictions that indeed are so strict that a Gulf Stream 4 aircraft, which represents the latest and most modern state-of-the-art technology used by our operators and is a fully complying stage 3 aircraft, violates the noise standards imposed by the city of Long Beach with both engines shut down, and you can't get much quieter than that. This is clearly an egregious example but unfortunately an all too commonplace example of what happens when individual airports are left to their own devices to impose their own noise standards.

Now, there are many ways in which legitimate noise concerns of airport proprietors can be addressed. One of the areas that we feel deserves a great deal more attention are the so-called Part 150 studies, which have long been a part of the Federal Aviation Regulations and the process. Unfortunately, these studies are today voluntary, and indeed there are powerful inducements on the part of local airport proprietors not to perform those studies. We would recommend that in any piece of legislation or national noise policy, prior to imposing any type of local restrictions, airport proprietors should have to engage in the Part 150 study and that the results of the study should be approved by the FAA or the Department of Transportation.

In addition, we believe that financial incentives to airport proprietors are appropriate and that perhaps additional financial incentives through AIP or other types of vehicles could be provided for additional zoning restrictions, aviation easements, and that type of provision.

We also think that a very controversial but nevertheless very important element of any noise legislation is a so-called third party cause of action. Unfortunately, today, in the enforcement of any type of noise restrictions or pieces of litigation concerning noise restrictions, there is no right on the part of any operator to engage in that type of lawsuit unless it is initiated by the Federal Government.

The way the current grants are drawn, only the Federal Government has the authority to initiate an action against an airport authority, and we believe a very important element, not only because it would not only involve the United States in a piece of litigation, but a very important element to be able to protect the rights of individual operators is to have a third party right of action under existing grant agreements.

In line with that, there has been I think a chronic concern primarily on the part of the Justice Department for many years that a national noise policy would expose the United States to an undue Federal liability, and while I recognize that this theme has been around for a long time, I would suggest that it is, first of all, greatly exaggerated and misplaced today.

First of all, I think it's important to recognize the difference between Federal preemption, which is not what we are talking about here, and a national noise policy that recognizes the legitimate local proprietor role and balances that with the national interest. It's important to recognize that the Federal Government has no interest, I believe, in becoming the airport proprietor anyplace in the country, so I do not believe that the mere establishment of a national noise policy exposes the Federal Government automatically to additional liability.

But more importantly, I think if you examine recent case law, you will find that the cases are tending to show two things—first of all, that courts are being extremely reluctant to award large monetary damages to those persons that have moved to an airport after that airport was in existence, and in fact a recent series of cases in California suggests that cities may in fact acquire a prescriptive noise easement over the land of people living close to that airport.

Secondly, I think that it is important that in those few cases where actual awards were given, the dollar value of those awards has been fairly small and, more importantly, has been diminishing over the last few years. So I believe that the preoccupation with Federal liability is grossly exaggerated.

Let me close by simply saying that probably the most compelling reason for a national noise policy and for this legislation is to recognize that we have a National Air Transportation System and that most of the airports in the country are a part of that national system. Just as a computer or any other piece of air traffic control equipment affects the capacity of our system, so do the airports, and a fragmentation, a patchwork quilt, as it has been called, of individual noise rules by the many airports throughout this country will absolutely bring our National Air Transportation System to a halt. Thank you very much, Mr. Chairman.

Mr. GEREN. Thank you, Mr. Howe.

Mr. GEREN. Mr. Green?

TESTIMONY OF STANLEY J. GREEN, VICE PRESIDENT AND GENERAL COUNSEL, GENERAL AVIATION MANUFACTURERS ASSOCIATION

Mr. GREEN. Thank you, Mr. Chairman.

My name is Stan Green, I'm with the General Aviation Manufacturers Association, and for those who don't know GAMA, we represent air frame, engine, avionics and other manufacturing companies. Our customers are the business aircraft operators, Jonathon Howe's members, personal aircraft operators, air taxi operators, and commuter airlines—basically, the general aviation gamut of aircraft uses.

We also support a national noise policy. For the industry whose product, by its nature, moves from State to State, from airport to airport, we've got to be assured that we can operate within known parameters at each end of each trip. Focusing on the issue of reducing or containing noise, we believe we can have a national policy that accommodates individual needs and configurations of runways at each of the cities to which such a policy would apply. I have absolute faith that the FAA and other organizations can

tailor such a program. It is inherent in the whole concept of the noise regulation and the Ldn concept, which was developed in 1972 by EPA for just this purpose.

The lack of a rational national policy has, in many cases, been of benefit to only one group, some of whom are members of that group—the attorneys. We see a proliferation of lawsuits where the restrictions on various operations have enhanced the coffers of the legal society but have not reduced noise at airports. The losers are the local taxpayers, the airlines, including the commuters, the business operators, and local citizen operators at personal airports. What we need is a new program that will ensure that everybody wins, perhaps not the whole ball game but enough that you know that you have won.

We consider noise an impediment to sales of aircraft. Clearly our objective is to build quieter aircraft. They sell better. They sell better in the United States, they sell better overseas, and noise has been an issue overseas for as long as it has been one here, if not longer. What the U.S. needs in the way of a national coordinated effort of a research program to lower noise becomes evident when you see again that lower noise aircraft sell. They sell better here and overseas as well.

We have worked as manufacturers in reducing aircraft noise, we have research going on for the purpose of defining new ways to reduce aircraft noise, but to date we haven't come up with the answers. Neither have the aircraft manufacturers of the large airline aircraft. We are about at the limit of technology now, and we do not see answers. We encourage a national policy of promoting research in this area and have attached to our comments some recommendations for such research.

I need to point out that general aviation is different in many respects from the airline class of aircraft. Our propeller-driven aircraft, for instance, are not categorized in stages. We just measure the decibels, the amount of noise they produce, and state those numbers in the certification data. Our jets are categorized in stages, but stages do not accurately categorize the noise levels from our aircraft, so we're concerned about a ban that says ban all stage 2 airplanes by any date, simply because—and let me use a few examples—the Learjet, the model 23, one of the first of the business jets, certificated in 1964, is a stage 1 airplane. It makes 84.7 dba. The same very quiet number of 84-plus, less than 85, dba is made by the very quiet MD–80, an airline aircraft that is known to be a quiet airliner. A person hearing each of these aircraft would assume that the sound level of the two of them is identical. One is a stage 3 airliner, one is a stage 1 business aircraft.

There are many other representative numbers, just a few to put things in a little bit of perspective. The very popular Cessna 172 makes 61 db on take-off, again using the same criteria as was done in measuring the MD–80. Sixty-one. The Piper Cub, 53 dba. When you get into our business jets, the Sabre Liner 70, which is a stage 2 airplane, makes 88 db. Compare that with the 95.8 db of the 747–200, a stage 3 airplane. Again, the numbers count, stage does not, and any kind of restriction as has been proposed by the task force, the Access Task Force and the Noise Working Group, recognizes this difference and has specifically proposed exempting all aircraft

under 75,000 pounds from any restriction on the operation of stage 2 aircraft.

That same kind of an exemption, as Mr. Howe pointed out, is being done in the European economic community, it's done by the Port of New York and New Jersey Authority, simply because people react to noise; they don't react to stage, except when they go to the theater. Thank you.

Mr. GEREN. Thank you, Mr. Green.

Captain Duffy, you talked about then, in your written testimony, procedures such as steep climb angles and power reductions while flaps are still dragging in an effort to accommodate the needs you have in landing at different airports. Do you see those as a threat to safety, and who designs those procedures, and what's the role of the FAA in approving those procedures?

Mr. DUFFY. Well, our true objection to those procedures are that they are created by the local airport authority, who is focusing purely on the noise aspects of it, they are not coordinated, as we would with the normal development of any kind of noise abatement procedure, not coordinated through the air frame and the engine manufacturers to provide margins of safety in the event of unexpected events, which is the pilots' main concern. It's fine to take a single point approach to this, as the local communities are, unless you're in that airplane and come up against an emergency where you have not provided the proper margins of safety, and at that point you have a truly unsafe situation.

There are tradeoffs here, there is a happy medium, there is an industry working that's been working very hard to put together a program, the dedicated simulator, by one of the major carriers where we are measuring noise footprints, and that program is about 50 percent complete. Our findings are that a clean airplane configuration in fact produces the lowest footprint, and if we can standardize that procedure so that pilots from airport to airport are using something like the same procedure, and if it's clean, then I think we have hit that happy medium between putting the least noise footprint on the ground but still providing us with some reasonable margin of safety.

Mr. GEREN. Thank you. Captain, you also stated that ALPA is involved in an operational engineering study about noise procedures under FAA's auspices. What's the status of those efforts?

Mr. DUFFY. That program is about 50 percent complete now. We think that probably in, I would say, a matter of months it will be complete. The results of that should be very carefully instituted into the system. I think they're going to have to be forced on some of these local communities, because, again, they're single point oriented, they're only thinking about that noise footprint on the ground without any consideration as to margins of safety in the air, and, again, the John Wayne Airport is the most egregious of the ones that we operate in.

Mr. GEREN. Mr. Green, you suggest that manufacturers be required to develop and publicize aircraft type specific operating procedures to reduce noise. As a representative of manufacturers, why do you suggest that a requirement be placed on you to do this, and are some manufacturers resisting this?

Mr. GREEN. In most cases, the manufacturers are providing this information, and what really needs to be done is in fact similar to what Captain Duffy has suggested. We need to put such requirements in effect so that we can standardize them throughout the country at each airport. It will result in lower noise, but it will be a standardized procedure that will be a safer procedure.

Mr. GEREN. Thank you.

Mr. Clinger, do you have any questions?

Mr. CLINGER. Thank you very much, Mr. Chairman.

You've all indicated that there's a need for a national noise policy and some sort of standardization here to limit the proliferation of local standards which create confusion, and yet we've had testimony also which would suggest that there are unique circumstances from place to place that cannot possibly be covered by some sort of a national policy and that there has to be some recognition of local conditions. Do you have any suggestions of how we cut that Gordian knot, how we can provide for what is a local unique situation and yet not inhibit airlines or anybody from operating in an efficient way?

Mr. HOWE. Mr. Clinger, let me take a crack at that. First of all, that is the reason that we proposed using the existing 150 process as the best way, as you say, of approaching that Gordian knot. I think we recognize that there is clearly a legitimate concern on the part of the local airport proprietor for noise problems. He has a constituency and a population that he has to deal with, and he should not be written out of the equation.

The Part 150 study does exactly that. The part 150 study says to the airport operator, "Analyze your local situation," and it sets out a methodology to do that, and once you have used that methodology to look at your local situation, you can make various findings and conclusions. It will then be subjected to scrutiny on the part of the FAA to make sure that it does not unnecessarily intrude upon a national level of standardization and accomplishes, I believe, that balancing process. In the few instances, I'm sorry to say the few instances, where that process has been allowed to work, I think it has produced an acceptable result.

Mr. CLINGER. All right. Why hasn't it worked better, though?

Mr. HOWE. Because I think that most airport operators—it's a voluntary procedure, and most airport operators are reluctant to subject themselves to having to jump through those hoops and submit it to the FAA, particularly if the result that comes back to the FAA is not to their liking. Then they've made a record of it, and they're stuck with it.

Mr. CLINGER. So we should consider mandating compliance with that Part 150?

Mr. HOWE. Yes, I believe that's the way to do it.

Mr. CLINGER. The bill that Senator Ford has introduced in the Senate in the last couple of days, which includes the passenger facility charges as well, would appear to include most of the provisions resolving aircraft noise that the industry has been urging. It would appear to me that it almost could have been written by the industry. Would you agree with that assessment of what the Senator's bill contains?

Mr. DUFFY. Mr. Clinger, I think that you will find all of this group very supportive, but I think that bill is a masterpiece of crafting in that it holds something for everybody, and for us it holds a solution to this non-standardization problem and puts us back into some realm of safety reality, and that's what we like about it.

Mr. HOWE. And I would echo that, Mr. Clinger. We gave a ringing endorsement to Senator Ford's bill as, I think, the most comprehensive approach to all of these problems.

Mr. CLINGER. Well, the very fact that you give it all such a ringing endorsement may mean that it's in some trouble, because you have people on the other side that are not going to be nearly as enthusiastic, I fear, as you are.

Mr. Green, what do you think the prospects are for further development? We've heard today that there really is nothing on the horizon in terms of state-of-the-art that would allow any greater or better development of noise control than we presently have.

Mr. GREEN. We don't have the technology, Mr. Clinger. We don't have the technology, and I think the Nation that gets some technology in this area is going to have a leg up on the world market for aircraft, but it will take a relatively massive research and development program with FAA and NASA and industry and academia and everybody that has some smarts in this noise business. The benefits that came with the high bypass engine, the lessons we've learned about the tweaking of the noise control, the flap manipulations, and all of the other things that disturb the air flow and create noise, we know a little bit about that, and perhaps you can get a half db here and a half db there, but it doesn't amount enough now to change the average person's view that the airplane is still noisy. We need some new technology, and it's just not on the horizon.

Mr. CLINGER. It's not on the horizon at the present time.

Mr. Howe, you favor giving airlines and other private parties the right to sue over airport noise restrictions, but doesn't this raise the danger that once you get the courts involved in this way that it could result in the very thing we're trying to avoid, which is the fragmentation of the National Transportation Policy? You have courts in different parts of the country sticking their nose into this and coming up with perhaps contradictory or redundant or overlapping rulings. How do you address that?

Mr. HOWE. Well, indeed, I agree, and I think that, of course, the ultimate objective here is to get the courts out of this whole area, because the courts clearly have contributed to the fragmentation. But given the proposition that today, unfortunately, we are litigating these issues, I do believe that it would provide a much greater inducement on the part of all of the parties—the government, the airports, and the users—to reach a settlement prior to litigation if the airport authority particularly recognize that even in the absence of the Federal Government being willing to bring a suit, which in many cases they're not for manpower reasons or whatever, that a third party could bring the suit. I think that there's a much more powerful inducement on the part of the airport authority especially to reach an accommodation with the users of the airport if there is the prospect of litigation.

Mr. CLINGER. Okay.

Gentlemen, I want to thank all three of you for being here today and your excellent testimony.

Mr. GEREN. I'd also like to add my thanks to each of you. I appreciate very much your testimony today as well as the written testimony, which we will certainly study and value your input. Thank you.

This subcommittee will reconvene Tuesday, October 2nd, at 9:30, in this room. We'll hear from the Department of Transportation, among others, at that time. The subcommittee stands adjourned.

[The prepared statement of Mr. Howe appears on p. 447.]

[The prepared statement of Mr. Green appears on p. 435.]

[The prepared statement of Mr. Duffy appears on p. 428.]

[Whereupon, at 3:59 p.m., the subcommittee was adjourned, to reconvene at 9:30 a.m. on Tuesday, October 2, 1990.].

Testimony of Stephen A. Alterman,
Executive Vice President and General Counsel
Air Freight Association

With Respect to a

FEDERAL AVIATION NOISE POLICY

Introduction

The Air Freight Association is a nationwide trade organization representing the interests of air cargo companies throughout the United States. Members include all-cargo airlines, air freight forwarders and other members of the business community with interests in the air freight marketplace. A list of current Association members is attached hereto as Appendix A.

Before dealing with the specifics of any federal noise policy, let me assure you that our industry is not insensitive either to the problem of noise in communities surrounding airports, or to the very real problem airport

proprietors face in balancing these noise concerns with the needs of the economy for fast, efficient airline service. Indeed, members of the air freight industry have been in the forefront in attempting to fashion workable solutions to this complex problem. We have participated -- with the airports and passenger airlines -- on several Industry Task Forces studying the possibility of a mandatory phase-out of Stage 2 equipment; our members have been actively working on economically viable techniques to convert both B-727 and DC-9 equipment from Stage 2 to Stage 3 certification; and, when economically possible, Association members have committed to the purchase of new Stage 3 aircraft or to the re-engining of aircraft to meet Stage 3 standards. We have also worked with various local jurisdictions in an effort to resolve disputes before the need for costly and divisive litigation.

At this moment, however, it has become obvious that permitting local jurisdictions to impose scores of different and confusing noise-based operating restrictions on the air freight industry is seriously threatening our ability to maintain the nationwide system of distribution which the United States business community has come to rely upon. As Boston, Seattle, Los

Angeles, New York, Minneapolis, West Palm Beach and San Francisco (among others) each enact regulations which restrict the type of aircraft which can be operated; the time of day when operations can take place; or the frequency of those operations; the noose tightens around the necks of those companies striving to keep an effective, efficient national transportation system running. Accordingly, as noted by the First Circuit Court of Appeals in Boston, "[t]he need for a cohesive, uniform national policy in the control of the country's airspace is clearly paramount. To allow parochial interests to overcome such concerns is to invite ungovernable checkerboard anarchy." New England Legal Foundation, et. al. v. Massachusetts Port Authority, 883 F.2d 157, 175 (1st Cir. 1989).

Therefore, we urge this Committee immediately to recognize the unique requirements of the all-cargo industry and to take those actions which are necessary to implement a federal aviation noise policy which will balance the needs of the nation's shipping public with the desires of airport neighbors for a quieter environment. In our opinion, such a policy must include:

- A phaseout of Stage 2 equipment by a date certain (the Association would not object to the use of the year 2003 or even the year 2000).

- A guarantee that Stage 3 aircraft will be free from all local operating restrictions for the useful life of such aircraft.

- A guarantee that Stage 2 aircraft can be operated free from local restrictions during the Stage 3 phase-in period.

- A statutory provision which would provide affected airlines with a private right of action to test, in the federal courts, the legality of local operating restrictions imposed by airport proprietors.

- To provide for unique local problems, a procedure whereby airport proprietors can request authority from the Secretary of Transportation to impose restrictions not otherwise permitted.

However, the burden of demonstrating such a unique need and proving that such requirements are paramount to the need for an unfettered national transportation system must be on the applicant.

With this background and proposal in mind, we urge that you consider the information which follows -- a description of our industry and the role it plays in the American economy -- and move expeditiously to insure the continued existence of the services required by shippers around the world.

Industry Background

On November 9, 1978, the United States Congress enacted P.L. 95-163 whereby the domestic air cargo industry was freed from the decades-long restraint of pervasive federal regulation. Pursuant to this law, air cargo carriers were free to obtain expanded certificate authority and the Civil Aeronautics Board's jurisdiction over domestic freight rates, new product innovation and managerial pricing initiatives was sharply reduced or

eliminated.

Since air cargo deregulation, a significant transition has taken place. Many of the pre-deregulation providers of scheduled freighter service have exited from the industry. Indeed, in domestic markets, only one combination carrier offers freighter service today. At the same time, a whole new industry has emerged to fill the void and to provide American shippers with the services they require. Led by the entry of Federal Express in 1973 -- with its highly successful integrated door-to-door service and broad geographical coverage -- many of the large indirect carriers and courier companies have aggressively entered the business.

During the past 12 years, the all-cargo express industry has achieved enormous growth and success. Today, it provides overnight express service to and from virtually every zip code in the country. Our industry is also extremely competitive. There are currently at least eight major providers of competitive air cargo products. In essence, this competitive structure and composition of our industry today exerts maximum pressures for economic

efficiency, new product/service innovation, and extraordinary pricing discipline. The evolution of this industry structure has been of enormous benefit to all shippers throughout the United States, and air freight costs to the shipper (adjusted for inflation), have actually declined 5% per year since 1980[1] according to Boeing's 1988 air cargo forecast. Furthermore, customer service features, such as state-of-the-art tracing and tracking capability, on-call pick-up service, Saturday service, residential coverage, money-back guarantees, automated billing and reporting system, among numerous other advances, are relatively new innovations in the past 15 years.

Pick-up times for the shipping public are later and next day delivery times have been substantially improved by the integrated hub/spoke carriers. Moreover, delivery reliability has been exceptional. On-time performance is typically 98% to 99% and loss and damage problems have been vastly improved. Indeed, in 1987, all-cargo carriers paid the lowest total and percentage claims in history -- 29 cents per $100 of cargo revenue (0.29%). By comparison, the LTL trucking industry claims payout ratio is

[1]Excludes express traffic of integrated carriers.

approximately 1.55%.[2]

In addition, it is clear that the services of our industry have been a major factor in bringing small communities and rural America into the mainstream of the country's economic growth. New manufacturing and high tech plants, along with medical and research centers, are being attracted to low capital production cost areas of the country, at least in part because we provide them with regular express transportation access to every other corner of America and most parts of the world. While our services in small communities are not a sufficient condition for attracting new industry, our services are a necessary condition. We provide these essential transportation services to rural as well as industrialized America with the same rate scales and usually the same service guarantees and performance reliability. None of this small community service requires subsidy by the federal government, or any other public entity.

Moreover, since passenger deregulation, the skies have become more

[2]The data contained in these Comments have been excerpted from a study entitled The All-Cargo Air Carrier Industry: Its Economic Impact and Future Needs, (April 1989) prepared for the Air Freight Association by the consulting firm of Leeper, Cambridge and Campbell of Alexandria, Virginia.

crowded and the pressures on airport capacity are extreme in many cases. Our industry does not exacerbate those problems. Because our operations are off-peak to the passenger system, we provide positive additional utilization of the scarce airports and airways resources. Moreover, a recently completed FAA Airports and Airways Cost Allocation Study found that the all-cargo carriers were the only user group which was paying its full share of the system costs, through the 5% waybill tax (Aviation Trust Fund).[3]

In essence, domestic air cargo deregulation has been virtually trouble-free. Our operations do not create additional airport and airways congestion and our consumer complaints and claims experience are at historically low levels and are still improving. Our expansion to small communities has been a major success. And a recent DOT survey of shipper organizations found nothing to criticize about our industry and no suggestions of regulatory reform were recommended.

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[3]For purposes of this analysis, we have logically combined commuters and large passenger carriers into one category since more than 70% of commuter passengers connect to Section 401 carriers.

UNIQUE CHARACTERISTICS OF THE ALL-CARGO INDUSTRY

Any consideration of airport noise issues must take into account the unique requirements of both the air cargo industry and the shippers it serves. Any premature imposition of Stage 3 regulations on the all-cargo industry will result in profound economic detriment to shippers and local/regional/national economies, as well as to the carriers because costs and rates will rise significantly, service will undoubtedly be curtailed, and competition will be significantly reduced. Unlike the U.S. passenger airlines, which are now achieving averages of 10 to 12 block hours per day utilization of their aircraft, the integrated all-cargo/express carriers typically average only 4.0 to 4.4 hours per day. This fact results from the narrow operating window at night when most aircraft in the fleet can only perform one round trip to and from each company's hub. Moreover, most of the all-cargo aircraft are idle from Saturday morning until Monday night, so there is very little weekend utilization.

In addition, because we have such limited potential revenue use for

our aircraft, it is an economic necessity that we operate equipment with low capital costs. Typically, these aircraft are either used cargo planes, or, more frequently, used passenger planes which have been converted to all-cargo use. Indeed, since our utilization is low, fuel costs are less important than ownership costs. The industry can absorb higher fuel costs, if necessary, and the technology of narrow-body jets built in the 1960's and 1970's is therefore acceptable to the cargo carriers. It makes little economic sense to replace a perfectly safe and economically viable DC-8-62/61 with a more fuel efficient plane of similar capacity (but far less range), which might cost $45 to $60 million, and to finance this new plane at effective interest rates of 10% or more. It is also important to point out that aircraft used this way, and maintained to the highest standards of FAA Part 121, are just as economical and safe for at least 40 to 50 years, compared to the shorter useful life of the same airplane operated and maintained in passenger service for its entire life. In addition, because of the breadth of geographical coverage each of our members provides, the service requires a large number of planes. We cannot simply consolidate 3 or 4 B-727 markets into one wide-body market. As traffic lanes grow, we have upgraded to widebodies.

However, we cannot upgrade aircraft by consolidating lanes. In order to remain economically viable, the aircraft used in any particular market, or lane segment, must be tailored to the volume of freight generated in that market.

A second major factor which distinguishes our members' flight operations from those of the passenger carriers is "time of day". Because of the nature of our service, and the demands of our customers which derive from their production/work schedules, prime time for us is evening through early in the morning (7:00 p.m. to 7:00 a.m.). The essence of our corporate existence, and the needs of our shipper customers, depends upon evening and early morning cargo operations with relatively low cost aircraft.

A third important factor, which uniquely distinguishes our members from the passenger carriers, is that we take responsibility for the traffic from the shipper's door to the consignee's door. This function may be viewed as a long chain of transportation and logistical links. Disruption, delay, or schedule changes in any one link, whether it is in pick-up, airport

facilitation, a flight segment, or the sort function, will destroy the service integrity for that shipment and thousands of others which may be similarly disrupted. On the other hand, passenger responsibility is limited to airport-to-airport service and connecting complexes are relatively simple in the sense that passengers aid the carriers in the connecting process.

THE OPERATIONAL RESTRICTIONS OF THE HUB AND SPOKE DESIGN

As described above, over the past ten years the United States has seen the explosive growth of an air express industry designed to provide overnight air service for American businesses, governmental offices, medical centers, non-profit organizations, and private residences in every zip code in the country. This service was instituted to accommodate the needs of shipper customers and the system was designed to provide the most efficient method of insuring that packages could be picked up and delivered at the times required by these customers. It is not coincidental that virtually all air express companies have established hub and spoke systems, with hubs located in or near the Ohio Valley area. The hub and spoke system is the

only economically viable way to connect every community in the U.S. with every other, and to provide the same quality of service to each of several billion O & D community pairs. To illustrate this point, assume that a carrier served 100 cities (airports) throughout the United States. Under the assumption that there would be 9,900 unique air cargo markets.[4] In order to offer late-night departure and early morning arrival service, as our hub and spoke operators do today, it is fair to assume that, in a linear system, one airplane may average only two flight segments per night. Therefore, in our hypothetical example, the carrier serving 100 cities would need 4,950 airplanes - an economically impossible proposition. With the hub and spoke operational design, a 100-city network can be served with 99 airplanes (assuming the hub city is one of the markets). With 99 airplanes, each flying from one outside city to the hub, and return each night, this fleet provides the ability to service 9,900 unique city-pair markets.

The economics of growth are exponential with hub and spoke systems - 199 airplanes can service 39,800 unique city pair markets, or a 50 city

[4] 100 x 99 = 9,900. In the case of air freight, each market is uni-directional; i.e., city-pair A-B is a different market than city-pair B-A.

grid serves 2,450 city-pairs with 49 airplanes.

In order fully to understand this system, it is important to describe the schedule and the sort activity at the hub. A nightly sort requires approximately three hours to complete from the time of the first aircraft arrival until the last plane is ready for departure. This requirement exists even for the highest capacity sort centers like those of Airborne, Federal Express and UPS. In simple terms, each inbound aircraft is off-loaded and the packages/pieces are processed through the center, sorting them by destination city/airplane/zip code. Each plane is then loaded with its traffic for the destination city which it serves. Thus, for example, all of traffic from a given city such as Minneapolis-St. Paul is sorted at the hub where it is reboarded on flights serving the destination points. Correspondingly, all the Twin Cities inbound traffic arrives in the morning from the hub where it was sorted for the Minneapolis-St. Paul destination airplane. Because the operating envelope at the hub is very narrow, any inbound delays create major problems with the sort, and one inbound delay could create a delay to every outbound flight.

Hubs in the Eastern time zone tend to operate between about 1:00 a.m. and 4:00 a.m. Others in Midwest operate about one hour earlier. The time of the sort is absolutely critical. Because the country covers four time zones, and because it is essential for the shippers to offer pickups at least until 5:00 to 6:00 p.m. in the West (which is 8:00 to 9:00 p.m. at the eastern hubs) and to return for early morning delivery, the sort schedule must accommodate these marketing and service requirements. Shippers in the East require late close-out times in order to fill orders until 8:00 or 9:00 p.m. Many of these orders come from the West where it is three hours earlier in the work day. Secondly, because there are many more markets in the East than in the western regions of the country, the economic centroid of a system[5] is well east of the centerline of the country.

One might ask why the sort cannot be accomplished earlier so planes could depart from their hubs earlier. Such a system would destroy the integrity of the service in the West by requiring couriers to finish pickups by

[5]That point which minimizes total system flying expenses.

2:00 or 3:00 p.m. and it would destroy the evening service to shippers in the East who must fill orders up until 8:00 to 9:00 p.m. Similarly, if the sort time were later in the night, it would preclude next morning deliveries and once again destroy the quality of air service which American industry and shippers have come to depend on, which no other segment of the American transportation can provide, and which American companies require to be competitive in their businesses.

Consequently, the hub and sort function is a most critical link in the chain of door-to-door operational steps. The sort simply cannot be rescheduled, and airplanes cannot be operated at different times without destroying the very essence of the service. This service, as it operates today, provides overnight express transportation from every community in the United States to virtually every other community in the 50 states, and second day service to most countries in Europe, Asia, and Latin America. To maintain this service, the sort cannot be altered, nor can the hub and spoke design of the air system be changed.

ECONOMIC BENEFITS OF THE ALL-CARGO INDUSTRY

Local and regional benefits from airport operations are generally described in three categories: direct benefits, indirect benefits and induced or multiplier effects.

Direct impacts are consequences of economic activities carried out at the airport by airlines, FBO's, cargo handlers/forwarders, and other tenants with direct involvement in aviation. Employing labor, purchasing locally-produced goods and services, and contracting for facilities construction and capital improvements are examples of activities which generate direct economic impacts.

Indirect impacts derive primarily from off-site economic activities which are attributable to airport operations. These activities include hotels, restaurants, trucking and the like.

Induced impacts are the multiplier effects of the direct and indirect

impacts. These are the increases in employment and incomes over and above the combined direct and indirect impacts, and are created by successive rounds of spending. For example, most of the take-home income earned by our employees at airports or elsewhere spent in this same area. This spending becomes income to others locally, and so the multiplier effect is created. State and local tax revenues are also enhanced significantly by the spending generated by our member air carriers.[6]

The services provided by the members of the air freight community by virtue of their flight operations have a wide ranging economic ripple effect throughout the United States. Our services are offered to the public throughout the entire country, and we employ people in sales, administrative and courier services throughout the nation.

Another form of the ripple effect is seen in connecting air transportation. Air cargo operators which contract for feeder aircraft service to/from smaller points must connect those flights with the evening jet

[6]A more complete description of economic impacts created by airports and their activity is presented in the Federal Aviation Administration's, Measuring the Regional Economic Significance of Airports, October 1986.

departures and the early morning arrivals at major airports. If the jets could not operate, all of the connecting air service would be eliminated since there would be no need for small aircraft connecting service.

Although it is clear that the all-cargo industry has grown explosively since deregulation in the late 1970's, the lack of reliable data anywhere (due at least in part to the elimination of many federal government reporting requirements) made any precise estimate of the size and scope of our operations extremely difficult. Therefore, in 1988, ten major U.S. all-cargo airlines[7] -- in conjunction with the Air Freight Association -- commissioned an economic study of the all-cargo industry. Prepared by the consulting firm of Leeper, Cambridge and Campbell (Alexandria, Virginia), this study for the first time quantified the economic contribution of the all-cargo carriers. A summary of some of the more significant findings is contained in Table 1, below.

[7]Airborne Express, Burlington Air Express, CF Air Freight, DHL Worldwide Express, Emery Worldwide, Evergreen International Airlines, Federal Express, Flying Tigers, Southern Air Transport and UPS.

TABLE 1

SUMMARY OF ALL-CARGO AIRCRAFT OPERATORS' GROWTH
IN ASSETS, REVENUES, TRAFFIC, EMPLOYMENT AND CUSTOMERS
1977-1987

	Air Cargo/Express Industry Totals		Percent Increase	
	1987	1977	Absolute	Compound Annual
Air Transportation Revenues (millions)	$9,108	$1,128	707.4	23.2
Air Shipments (millions)	414	34	1117.6	28.4
Air Pounds (millions)	4,920	915	437.7	18.3
Net Fixed Assets (millions)	$7,991	$909	779.1%	24.3%
Net Stockholder's Equity (millions)	4,871	702	593.9	21.4
No. of Jet Aircraft in Service	372	59	530.5	20.2
No. of Over-the-Road And Pick-up/Delivery Vehicle	122,708	51,215	139.6	9.1
No. of Employees (full-time equivalents)	106,685	18,306	482.8	19.3
No. of Active Customer Accounts	4,548,693	565,530	704.3	23.2

(It should be noted that the data contained in this Table are conservative since not all the carrier-participants responded to every question on the questionnaire distributed. The information is, however, representative of all-cargo industry growth through Calendar Year 1987).

In addition to the growth in the 10-year period covered by the industry study (as detailed in Table 1, above), it should also be recognized that significant (but as yet unquantified) growth has taken place since 1987. Indeed, the industry today is even larger (but with two fewer participants[8]) than the data in Table 1 indicates.

Of course, the growth of the all-cargo industry cannot be viewed in a vacuum. Rather, it must be considered in the context of the shipping community it serves. In other words, the growth of the all-cargo industry occurred only because American business needed, and continues to need, the service provided. Yet it is precisely this service which is becoming increasingly threatened by the proliferating local operating restrictions enacted in the name of noise abatement.

SUMMARY

In holding these hearings and thereby opening the legislative debate

[8]Since the study was completed, Federal Express purchased Flying Tigers and CF Air Freight acquired Emery Worldwide (although the surviving company is still today called "Emery Worldwide".)

over a national noise policy, this Subcommittee has begun a process which hopefully will result in a cohesive federal policy on the subject of aircraft noise. Such a policy is clearly needed to avoid the growing nationwide chaos caused by a crazy-quilt collection of local noise-based operating restrictions. Indeed, without strong federal leadership from both Congress and the Administration, the all-cargo success story detailed above is in serious jeopardy. Weaker carriers may not survive, thereby lessening competition and increasing industry concentration; businesses and individuals throughout the United States will be unable to obtain documents and packages in required time frames; and the national economy as a whole will necessarily suffer.

While any federal policy ultimately enacted should provide relief for airport neighbors in the form of a mandatory conversion to Stage 3 equipment by a date certain, it must also contain a guarantee that the carriers which will spend billions of dollars to convert their fleets will be able to use their Stage 3 equipment for the useful economic lives of these aircraft. Moreover, during the phase-in period, carriers must be able to

continue to operate Stage 2 equipment free from local control, and such carriers must be given the legal right to attack in the federal courts the legality of any restrictions attempted to be imposed by local airport proprietors. Finally, to provide for unique local problems, the Secretary of Transportation should be mandated to enact regulations which would permit airport proprietors to seek approval for restrictions otherwise unlawful -- if they can demonstrate that such restrictions are necessary due to unique local circumstances and that any such restrictions do not do violence to the national transportation system.

This program will mandate that the all-cargo industry's Stage 2 aircraft -- which economically and safely could be operated well into the 21st century -- will be replaced or converted to Stage 3 noise standards within the next decade. At the same time, the Air Freight Association proposal for federal action will insure that local noise concerns do not paralyze the national air transportation system and that members of our industry will be free to make equipment modification and purchase decisions, as well as operational decisions, with a degree of certainty not available today. This

balance of economically premature elimination of Stage 2 equipment, along with operational guarantees for the industry making the conversion to Stage 3 aircraft, is, in our opinion, the only way to manage an admittedly difficult situation.

Thank you on behalf of our members for the opportunity to present our comments on the need for a federal aviation noise policy. We pledge to work with you and the Administration in an attempt to arrive at a satisfactory resolution of this difficult problem.

APPENDIX A

AIR FREIGHT ASSOCIATION

COMPANY	CITY, STATE
Air Cargo Management Group	Seattle, WA
Air Courier Conference of America (ACCA)	Washington, D.C.
Air Express International	Darien, CT
Airborne Express	Seattle, WA
AIT Freight Systems, Inc.	Elk Grove, IL
American Cargo Handling Equipment	Denver, CO
AMR Combs-Denver	Denver, CO
Arrow Airways, Inc.	Miami, FL
Aviall, Inc.	Dallas, TX
British Aerospace	Washington, D.C.
Burlington Air Express	Irvine, CA
Colography Group	Roswell, GA
Continental Airlines	Houston, TX
Delta Aircraft Painting Co.	Greenville, MS
DHL Airways, Inc.	Redwood City, CA
Emery Worldwide, A CF Company	Palo Alto, CA
Evergreen International Airlines	McMinnville, OR
Federal Express Corporation	Memphis, TN
FIDC/Fairbanks International Airport	Fairbanks, AK
Leeper, Cambridge & Campbell	Alexandria, VA
Northern Air Cargo	Anchorage, AK
Ryan International Airlines, Inc.	Wichita, KS
Southern Air Transport	Miami, FL
Surf Air	Atlanta, GA
United Aviation Services, Inc.	Uniondale, NY
United Parcel Service	Louisville, KY

June 12, 1990

TESTIMONY OF BRIAN E. COLE
on behalf of
BURLINGTON AIR EXPRESS INC.
before the
HOUSE AVIATION SUBCOMMITTEE

September 27, 1990

My name is Brian E. Cole and I am corporate counsel for Burlington Air Express. I am testifying here today to urge the Subcommittee to adopt a balanced approach which reaches a reasonable accommodation between the desirability of reducing aircraft noise and the needs of the all-cargo industry and the millions of shippers who rely on it.

Burlington is very conscious of the problem of aircraft noise and wants to be a good neighbor. Burlington anticipates that over the next five years it will spend $20,000,000 to $30,000,000 for modifying its aircraft to achieve Stage 3 compliance. However, we want to be sure you understand and consider fully the marked difference between the economics of the air cargo industry as compared to the air passenger industry, as well as the severe practical constraints on how fast the all-cargo carriers can achieve Stage 3 compliance.

Above all, it is essential that there be uniform, nationwide rules for noise compliance. The all-cargo carriers must be able to plan for long term aircraft improvements with the assurance

that once they invest millions of dollars they will be able to operate their aircraft throughout the country without unreasonable or contradictory noise requirements.

Burlington is one of the country's largest all-cargo carriers. It operates a national and international air freight system generating approximately $900,000,000 in annual revenues, operated by 5,100 employees and serving 42,000 cities in the U.S. and 80 foreign countries. Burlington's revenues are about equally divided between domestic and international.

Burlington is proud to be a substantial part of the U.S. all-cargo industry which is, without question, the finest in the world. The U.S. has a substantial stake in maintaining the competitiveness of that industry.

Capital costs (i.e., depreciation or lease costs) are a substantial part of the total costs of an all-cargo carrier. Burlington currently gets an average daily utilization of only 4.2 hours on its aircraft as compared to 8-10 hours of daily utilization which is achieved by the passenger air carriers. Thus, the capital costs of Burlington's aircraft can be spread over relatively few hours as compared to the combination carriers. Therefore, Burlington, like most all-cargo carriers, is forced to rely heavily on lower cost used aircraft.

Carriers such as Burlington would find it difficult if not impossible to afford new Stage 3 aircraft. A Boeing 757-PF aircraft costs approximately $35-40 million per aircraft, and we understand that all of the delivery positions are taken for the

next three or four years. There are re-engined DC-8-71 series aircraft which may be available for purchase or lease, but they would cost approximately $25,000,000 per aircraft or a lease charge of $300,000 per month. Those figures are simply prohibitive for an all-cargo carrier such as Burlington.

Burlington currently uses a fleet of five DC-8-63's, two DC-8-54's, eight Q707's and four B-727-100's. Unfortunately, there is currently no technology certificated by the FAA for hush-kitting our DC-8-63, DC-8-54 or Q707 aircraft. Therefore, it is simply impossible to comply with Stage 3 as to those aircraft of Burlington at this time.

The Burbank Aeronautical Corporation is currently working on a hush kit for DC-8-63 aircraft and hopes that the FAA will issue it a certificate for such a conversion by the end of this year. Burlington has negotiated an agreement under which that company will hush kit two of Burlington's DC-8 aircraft by next spring, but that agreement is, of course, conditioned upon the FAA's certification of the modification. We are also hopeful that a hush kit can be developed to achieve Stage 3 compliance on Q707 aircraft.

However, even if the necessary technology is approved in the near future, it is simply not practical for Burlington to achieve full Stage 3 compliance all at once. In the first place, the manufacturers have limited facilities and cannot handle all of the aircraft conversions at one time. They will have to be

phased in over a reasonable number of years. Moreover, Burlington is simply not in the financial position to pay for the conversion of its entire fleet within a few years.

It must be recognized that the air freight business is extremely competitive. The basic costs of the combination carriers are essentially covered by passenger revenues, thus permitting them to price air freight on a by-product costing basis. Burlington must cover all of its costs from freight alone and yet at the same time it is forced to meet the air freight rates offered by its competitors. This makes it simply impossible for Burlington to achieve an immediate conversion to Stage 3 aircraft.

As I noted at the outset of my testimony, Burlington intends to spend $20,000,000 to $30,000,000 for conversion to Stage 3 aircraft over the next five years. It is extremely important that once that money has been spent for Stage 3 conversion Burlington be permitted to operate those aircraft on a nondiscriminatory basis at any airport in the United States. Burlington is painfully aware of this fact because of its unfortunate experience at the San Francisco International Airport.

In 1985 Burlington spent millions of dollars acquiring Q707 aircraft and DC-8-63 aircraft which complied fully with the FAA's Stage 2 noise requirements and with the noise regulations of the San Francisco International Airport at that time. However, when Burlington sought to operate those aircraft at San Francisco, the

Airport Commission adopted what Burlington and the FAA believe to be a totally invalid interpretation of its noise regulations and refused to allow Burlington to serve the Airport.

The FAA filed a complaint against the San Francisco Airport for failure to live up to its grant assurances which require an airport which has accepted Federal funding to be made available to all users on a fair, reasonable and nondiscriminatory basis. A lengthy hearing was held and the Chief Judge of the Department of Transportation found San Francisco to be in violation of its grant assurances because of its discriminatory exclusion of Burlington's aircraft. The FAA Administrator affirmed that decision. The case is now on appeal to the U.S. Circuit Court of Appeals for the Ninth Circuit and an oral argument should be held in November or December of this year.

In the meantime, Burlington has been excluded from San Francisco Airport for <u>over five years</u>. This has cost Burlington literally millions of dollars. This sad experience demonstrates the need for remedial legislation giving the carriers a private right of action permitting them to go directly into Federal District Court to enforce the antidiscrimination provisions of the federal airport grant assurances. Even more important, it emphasizes the compelling need for a uniform, national airport noise policy which carriers can plan on -- and rely on -- in making long range aircraft acquisition plans and the huge

investments they entail. It is difficult, if not impossible, to make sound long range investment plans if each local airport has the power to change the rules on you as you go along.

Another problem encountered by Burlington is that several airports have adopted or are considering adopting regulations which phase in Stage 3 aircraft over a period of time, but in a manner which is totally unrealistic for the all-cargo carriers. For example, Los Angeles has a proposed requirement that 25 percent of the flights must be operated with Stage 3 equipment after January 1, 1991. This provision would appear to be fair and nondiscriminatory on its face. However, in actual practice it is extremely discriminatory toward all-cargo carriers. For example, if a cargo carrier operates only one flight a day, then the 25 percent rule requires as a practical matter that 100 percent of its flights be operated with Stage 3 aircraft.

The problem at Los Angeles is compounded by the fact that it has limited each carrier to the number of Stage 2 flights operated in an historic period. Burlington follows the practice which has been adopted by a number of major air freight carriers of not operating its aircraft itself but of leasing them to Part 121 carriers which operate the aircraft for Burlington. Los Angeles has held that those Part 121 carriers are the holders of the slots rather than Burlington. Burlington, like every other carrier, constantly reviews its schedules and changes them from time to time. The refusal of Los Angeles to recognize that

Burlington is the real party in interest in these operations makes it impossible for Burlington to switch carriers in a particular market as needed to achieve maximum efficiency.

The standard of service in the air freight industry has become next-day delivery. Shippers throughout the country have come to depend upon that delivery and have tailored their operations accordingly. Instead of tying up huge sums of money in capital for large inventories, American businesses maintain "Just In Time" inventories and rely on overnight air transportation to meet their needs. This requirement of overnight delivery necessitates that the all-cargo carriers operate during nighttime hours at almost all locations. Therefore, the all-cargo industry is hit particularly hard when local airports impose special restrictions on nighttime operations.

The FAA determines land use compatibility at airports by use of the Ldn noise metric. That noise metric counts one nighttime flight as the equivalent of ten daytime flights. While it is obvious that noise can be more bothersome at night than during the daytime, it is highly doubtful that a ten to one penalty is justified. It is extremely important to the all-cargo industry that any future noise metric be realistic and be based on hard facts, rather than simply imposing an arbitrary penalty for nighttime operations.

Another unique feature of the all-cargo carriers is their need to serve every region of the country. Passenger air carriers serve only certain selected markets. However, cargo shippers want -- and insist upon -- a cargo carrier which can "sweep the dock" i.e., carry all of its freight to all points in the country, if not in the world. For example, a shipper in Chicago does not want to be bothered with using Burlington's service to every point in the country except Los Angeles and then have to find a separate carrier to handle freight to Los Angeles. Therefore, if an unreasonable rule at Los Angeles precludes Burlington from serving that city, Burlington would not only lose business in Los Angeles but could also lose key accounts to competitors throughout the country and indeed throughout the world.

Based on all the foregoing factors, Burlington makes the following recommendations to this Subcommittee:

1. Any schedule for phasing in conversion to Stage 3 aircraft must be realistically keyed in to FAA certification procedures.

2. Any conversion schedule should also take into account the limited availability of the manufacturers facilities and their capability for performing the actual conversion work.

3. Any schedule for phasing in Stage 3 aircraft should recognize the fact that a 25 or 50 percent requirement for a carrier which operates only one flight a day is in reality a 100

percent requirement. The ideal solution to this problem is to exempt as de minimis all-cargo operations of two or three flights a day at a particular airport.

4. Recognition must be given to the low aircraft utilization rates of the all-cargo carriers as compared to the combination carriers.

5. Special recognition must also be given to the absolute need of all-cargo carriers to operate at night in order to provide the next-day delivery which shippers now depend on and demand.

6. Special recognition must also be given to the need of all-cargo carriers to serve every section of the country so that the exclusion from even one city can have a crippling effect on its entire system.

7. The Federal government should adopt uniform, nationwide noise standards so that any all-cargo aircraft complying with those standards can be operated at any airport in the United States on a nondiscriminatory basis.

8. The air carriers should be given a private right of action so that they can bring suits directly in the Federal courts to enforce the nondiscrimination provisions of the airport aid grant agreements.

STATEMENT OF

CAPTAIN HENRY A. DUFFY, PRESIDENT

AIR LINE PILOTS ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON

PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

FEDERAL AVIATION NOISE POLICY

SEPTEMBER 27, 1990

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Captain Henry Duffy, President of the Air Line Pilots Association (ALPA), which represents the professional interests of more than 42,000 pilots who fly for fifty different airlines.

Approximately ten years ago, ALPA began to present the pilots' viewpoint about the relationship of aircraft noise problems and airport capacity. We knew that since the passage of the National Environmental Protection Act in 1969, only one air carrier airport, at Ft. Myers, Florida, had been planned and built in the entire United States, despite the ever-increasing growth of the air carrier industry. We were also aware that runways at some airports were being closed to air carrier use because of noise

sensitivity, while the use of other runways was being restricted for noise reasons in spite of the ever-increasing demand for increased capacity at these same airports. Our observations detected an alarming trend.

Deregulation further exacerbated the problem by doubling or even tripling the usage on these decreasing numbers of runways, and the results have been predictable. Because we can squeeze only so much out of the system, operational safety-related problems have increased. In-trail final approach spacing limits have gradually been decreased from 3 miles to 2 1/2 miles; because of the lack of adequate airport capacity, discussions are under way to reduce this spacing even further. At San Francisco, air carrier aircraft are flying wing-tip to wing-tip formations to land on parallel runways spaced as closely as 750 feet.

We've had difficulty in expanding airports, let alone building new ones. The new Denver airport will be a first, but let's not fool ourselves. That new facility is slated to be a replacement for the existing Stapleton Airport, not an additional airport for our National Airspace System.

In an effort to respond to local community noise complaints, the Federal Aviation Administration and the airline industry

developed Part 36 of the Federal Aviation Regulations. This regulation contains aircraft noise standards that classifies aircraft in the categories of Stage 1 (noisy), and Stage 2 (less noisy). Further, a third category was described that challenged the industry to create "quiet" Stage 3 aircraft. Billions of dollars have been spent in developing and manufacturing these Stage 3 aircraft, and today we see only the manufacture and sale of quiet Stage 3 aircraft for airline fleets. Yet pilots flying these aircraft, many that are at least ten times quieter than most Stage 2 aircraft, are being forced to fly using marginally safe flying techniques mandated by the local noise management schemes of some airports.

Efforts by airports to address their local noise problems have fostered an increasing variety of schemes to solve those problems. Many of those schemes affect the safety of the traveling public, and, of course, the safety of our pilots. Some of these proposed schemes are unsafe and should not be permitted. These require procedures that combine extremely steep climb angles and deep reductions of power while flaps are still creating drag, and leave our pilots with precious few alternatives if abnormal events occur. Sudden engine failure is presumably accounted for with the engine-out climb gradients that must be established in any takeoff procedure, yet we have found

procedures designed and enforced that seem to ignore those limits.

Some airports have limited any Stage 2 operations to daylight hours, with no restrictions on Stage 3 airplanes. Other airports have simply eliminated Stage 2 operations altogether, a difficult proposal since insufficient numbers of Stage 3 airplanes currently exist to satisfy the needs of this industry.

Now we even have an airport defining categories of Stage 3 aircraft, and allocating access to its facility by standards that are far beyond the federal requirements. At California's John Wayne - Orange County Airport, federally recognized Stage 3 airplanes are further divided into three categories. These categories are based upon combinations of gross weight, passenger capacity, and noise emissions at specific airport noise monitors. Measurements at the monitors are calculated from single event averages rather than the federal standard of day-night average sound level, or Ldn. Airport availability and interstate access are being controlled by these local standards.

Pilots are forced to fly the nonstandard procedures that are mandated by the local airport authority, and the success or failure of their performances determines the allocation of each

company's slots, which are necessary for the company to serve the airport. In our opinion, the competitive atmosphere of such a program flouts safety standards.

The proliferation of noise programs that advocate nonstandard procedures has raised concern in our industry. ALPA and other aviation organizations, at the FAA's request, are involved in an operational engineering study to design and validate safe and standard noise abatement procedures that may be applied at all air carrier airports. Should we be successful in developing such a program, the operational gymnastics now being performed with our aircraft at some of the airports we serve would be moderated, yet quiet operations could continue. Operations, regardless of location, would then be similar; and standardization, one of the best aviation accident prevention tools, would again be available to us.

Parallel to this operational study, the Aviation System Capacity Task Force (an aviation industry advisory group to the FAA Administrator) and a Noise Working Group of that task force have made tentative attempts to reach consensus on the issues of airport noise and future noise policy. As one might expect, this consensus has been very difficult to achieve. In spite of efforts to avoid controversy, the parochial interests of each of

the organizations have been difficult to overcome and full agreement has seemed impossible at times.

However, it seems as though this Noise Working Group is closer than ever to a recommendation that the FAA Administrator may take to the Department of Transportation for a national noise policy. Ultimately, each organization may relinquish something felt to be extremely important to its cause, but safety should not be an item considered for compromise. We are hopeful that the final product will suggest a policy that will allow an acceptable program to phase out older and noisier airplanes, the development of acceptable safe and standard operational procedures at all air carrier airports, the ability to construct new airports or runways wherever they might be necessary to improve the system, and sufficient capacity overall to meet the growing demands of the traveling public.

In summary, I believe that we need a national noise policy that mandates the safe and definably quiet operation of our National Airspace System, but allows the system to function. The FAA must be given the authority to standardize departures in favor of safety, before the proliferation of nonstandard and risky procedures becomes uncontrollable. The FAA should also be given the authority to prevent restrictions to Stage 3 aircraft

operations beyond those already specified by Part 36 of the FARs. Stage 3 aircraft, by definition, already meet the Part 36 requirements, and some of the restrictions being applied reduce the safety of the operation of those aircraft. Finally, if legislation is the only vehicle with which such a noise policy can be implemented, then we obviously need your help in writing that legislation.

Thank you for the opportunity to make this presentation. I will be happy to respond to any questions that you may have.

General Aviation
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STATEMENT OF THE
GENERAL AVIATION MANUFACTURERS ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
FEDERAL AVIATION NOISE POLICY
THURSDAY, SEPTEMBER 27, 1990

STANLEY J. GREEN
VICE PRESIDENT AND GENERAL COUNSEL
GENERAL AVIATION MANUFACTURERS ASSOCIATION

Good day. I'm Stan Green, Vice President and General Counsel of the General Aviation Manufacturers Association. I also have the privilege of serving as an official advisor to the U.S. delegation to the International Civil Aviation Organization's Committee on Aviation Environmental Protection. GAMA and its member companies sincerely appreciate the opportunity you have afforded us here today.

GAMA is a national trade association proudly representing 34 American manufacturers of general aviation aircraft, engines, avionics, instruments, related equipment and components. In addition to building nearly all the general aviation aircraft flying in the United States today, GAMA member companies also operate aircraft fleets, airport fixed-base operations, pilot schools and training facilities across the nation.

I. A National Noise Policy is Essential

The General Aviation Manufacturers Association strongly supports the promulgation of a federal aviation noise policy applicable to all public use airports and all airplanes. We need such a national policy in order to balance the required levels of safety in takeoff, approach and landing procedures for the various airplane types with growing public concerns with aircraft noise pollution.

A very disturbing element in allowing each individual airport "carte blanche" in the establishment of noise regulations is the current airport operator trend requiring "all Stage 3" operations which impose prohibitions against all Stage 2 aircraft regardless of weight, type, category or actual noise levels. It is

the GAMA position that a Stage 2 business jet, under normal circumstances, adds very little, if any, noise to the community environment around airports that also serve air carrier aircraft.

Although business jet operations at such airports may be few in number, GAMA is deeply concerned that such rules imposed at just a few airports will be followed by others across the country unless the federal government establishes a coherent, national noise policy; safety could be adversely affected if local airports can effectively control the manner in which airplanes are operated.

II. Technology for Further Reduction of Airplane Noise Must Be Developed

United States aviation regulators, working with their counterparts in other countries through the International Civil Aviation Organization's Committee on Aviation Environmental Protection (ICAO CAEP), concluded that transition to an all Stage 3 (Chapter 3 in ICAO's standards) fleet will result in a 70 percent reduction in the noise impacted area[1]. Though not stated, the conclusion was based on transition of Stage 2 airplanes of more than 75,000 pounds (34,000 kg.). Requiring conversion of Stage 2 airplanes of 75,000 pounds or less -- those typically used in general aviation, commuter and air taxi operations -- to Stage 3 will not result in any further reduction in the noise impacted area because of the already low noise levels and unique operating characteristics of most of these airplanes.

[1]See Working Paper of the U.S. Member to the 6th meeting of Working Group I of the ICAO Committee on Aviation Environmental Protection, available from the FAA Office of Environment and Energy.

The ICAO experts also recognize that current technology will not permit further reductions in noise. What is needed, therefore, is a well-funded and well-coordinated worldwide research effort to develop new noise reduction technology to be introduced in the 21st century. The United States experts also well know that the country whose industry has this new noise-lowering technology will gain the lion's share of the international market for aircraft. FAA should manage such a research effort in the United States utilizing NASA, DOD, academia and industry resources.

Recognizing that the needs of the greatest number of people will be served by basic research and technology development directed at new designs for the large airline class of airplanes and their engines, some effort needs to be placed on the smaller airplanes and their engines. Some specific recommendations that might lead to effective noise reduction for newly designed propeller driven and small turbofan powered airplanes (under 75,000 pounds) are attached.

III. For General Aviation, Stages Should Be Restricted to Theaters[2]

Airport access should be based upon the actual in-service noise produced by an aircraft type during day to day operations, not on Stage classification. It is our belief that the most effective method available to control airport noise is to 1) set reasonable, technically justifiable noise limits and 2) determine compliance through noise measurement.

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[2]See "Stages are for Theaters - Decibels are for Airplane Noise Measurements", SAE Technical Paper Series No. 892293, September 1989, by Stanley J. Green, General Aviation Manufacturers Association

Stage 2 business jets make less noise than many Stage 3 airliners and the business jets fly many fewer hours per year and flights per day. The noise reduction benefits expected from a Stage 2 airplane ban were calculated by the ICAO CAEP without including Stage 2 business jets in the ban. The results, a 70 percent reduction in the noise impacted area, would not significantly change either way by including or excluding the business jets and other general aviation airplanes.

Under present U.S. policy, airport authorities are allowed to set local noise regulatory and airport access rules. Any curtailment of the operations of Stage 2 aircraft in order to reduce noise in the vicinity of airports should be accomplished through a national plan and not in a random manner by local airports. Additionally, GAMA believes that if a national Stage 2 restriction becomes necessary, there exists a logical, technically justifiable argument that business jets having maximum takeoff weight of 75,000 pounds or less should be excluded from such a ban. The argument is based on the fact that business jets are different from air carrier types in several important aspects; lower utilization, fewer overall operations and random rather than scheduled operations. In addition, general aviation airplanes are more suited for noise abatement flight procedures than are airliners. Lastly, but most significantly, Stage 2 business jets generally make less noise than large Stage 3 air carrier aircraft.[3]

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[3]See Gulfstream Aerospace Corporation document No. FS-DH-89-006, dated February 28, 1990, "Subject: Gulfstream Aerospace Corporation Comments in Response to FAA Notice No. 89-3, Request for Suggestions for Updating the FAA 1986 Report to Congress, Alternatives Available to Accelerate Commercial Aircraft Fleet Modernization."

If it is determined necessary to phase out operations of Stage 2 air carrier aircraft, it must be done through a federal plan, exempting Stage 2 business jets with maximum takeoff gross weights of 75,000 pounds and under. The Council of the European Communities, after considerable study, has exempted business jets from the requirements of the Chapter (same as Stage) 2 non-addition directive and is expected to exempt business jets from subsequent Chapter 2 non-operational rules. The U.S. Port Authority of New York and New Jersey, in making the first steps toward phasing out Stage 2 air carrier operations at the three major airports serving New York City, is also exempting aircraft of 75,000 pounds and under.

A major concern of our industry is that local airport authorities often do not understand the mechanics of FAA noise certification and thus include all Stage 2 airplanes in their bans. All Stage 2 business jets' noise levels fall below or are equal to Stage 3 airliner noise levels. Regulations should not ban some airplanes that are quieter than others permitted to operate simply because of misleading "Stage" designations. People react to loudness, the frequency of the noise event and the time of day of.

Let me cite an example: it is ludicrous to think that anyone would consider a Stage 3 wide body air carrier aircraft measuring 106.5 EPNdB at takeoff, 99.7 EPNdB at sideline and 107.0 EPNdB at approach as more acceptable than a Stage 2 Gulfstream III using standard Quiet Flying procedures measuring 94 EPNdB, 92.6 EPNdB and 87.2 EPNdB at the same locations.

IV. Additional Noise Reductions in the Current General Aviation, Commuter and Air Taxi Fleets Can Be Achieved

The current fleet will be with us for many years to come because airplanes last a long time. Design lives at typical yearly usage rates often exceed forty years. Noise reductions in this fleet at a number of airports could be achieved through regulatory and operating procedure changes.

Until research provides some new noise reduction technology, GAMA recommends the following:

a. Prohibit local airport operating rules instituted in the name of noise control so that we will be able to establish FAA operating rules applicable to broad classes of airplanes (which the Federal Aviation Act says can be done). Such uniform operating rules will provide a higher level of safety than is currently in effect (because of local interference in the name of noise control) at many airports.

b. Require the development and publication, by the airplane manufacturer, of airplane type specific low noise operating procedures (LNOP) and their recognition and use by FAA. The LNOP way of flying can then become the standard method and, through repetition, the safest method of operation. FAA should also verify and publish noise levels expected in service from operation of an airplane type utilizing LNOP. Such information would be extremely

useful to airport authorities in determining which, if any, operators were using less than "best efforts" to remain environmentally compatible.

c. Within existing federal guidelines, require airport operators to determine the maximum acceptable single event noise limit the area can tolerate and determine how many such events per day would be permissible. This level should then be established as the airport limit, allowing all operations at levels below this limit, without discrimination.

Mr. Chairman, in conclusion, allow me to reiterate GAMA's support for the establishment of a national noise policy. We stand ready to work with this Committee, the FAA, the DOT and others to set prudent and meaningful parameters for such a policy. Thank you.

ATTACHMENT TO
GENERAL AVIATION MANUFACTURERS ASSOCIATION
TESTIMONY ON
FEDERAL AVIATION NOISE POLICY
SEPTEMBER 27, 1990

Research Needs to Lower Airplane Noise Levels

The high bypass ratio engine represented a step change in technology that allowed the introduction of a new breed of much quieter aircraft that meet Stage 3 noise standards. The impact of the introduction of Stage 3 aircraft and the corresponding retirement of Stage 2 aircraft will result in gradual improvement in the global airplane noise environment that will continue well into the next century.

A step improvement in future noise reduction technology comparable to that achieved with the introduction of high bypass ratio engines is not foreseen. The upper limits of existing technology are continually being applied to new airframe/engine development programs to increase propulsive and aerodynamic efficiency. However, additional reductions in specific thrust produce less acoustic benefit and lead to increased turbomachinery noise levels. There is no new noise technology to permit new airframe/propulsion systems to meet certification requirements substantially more stringent than Stage 3.

There is, however, a requirement for continued research and development into ways to further optimize, and to predict the effects of, noise reduction technology that is technologically practicable and economically reasonable, especially when considering propulsive systems for general aviation type aircraft.

GAMA submits the following items for consideration by FAA, NASA or other research organizations.

1. General Aviation Propeller Noise Reduction

   Studies of general aviation propeller noise reduction have been conducted over the years. One comprehensive study was conducted on three types of airplanes (a single-engine, a light twin, and a heavy twin) in 1979 by Hamilton Standard under a DOT/FAA contract. In this study, it was concluded that substantial propeller noise reduction might be achieved by strategies such as increasing the number of blades, reducing the diameter, changing the airfoil sections, thinning the blade, and modifying the blade planform. Although these changes maintained or increased aerodynamic performance, the propeller weight increased. Also, thinning the blades could result in inadequate structural capacity.

   From the time this propeller noise reduction study was conducted, there have been significant advances in materials technology, specifically in composites. Applications of these materials to low noise propellers could overcome the weight and structural penalties that were identified as problems during the 1979 propeller noise reduction study.

At this time, it appears that a study similar to that which was conducted in 1979 would be appropriate. For the present study, however, the advances in materials technology would be factored in so that the propeller design features leading to reduced noise would be attained without compromises in aerodynamic performance, weight, or structural integrity.

Reference: Klatte, R.J. and Metzger, F.B., Influence of Noise Reduction on Weight and Cost of General Aviation Propellers, Report No. FAA-AEE-79-18, June 1979.

2. Installation Effects on Propeller Noise

Problem Statement: Noise of propeller driven aircraft is often higher than would be deduced from wind tunnel tests of simple analytical models that neglect effects of installation geometry. Guidelines are needed for the designer to assess the noise impact of various installations.

Background: Starting in the late 1970's, prediction methods for propeller noise has made major advances as a byproduct of development programs for Prop-Fans and UDF's (Unducted Fans). Evaluation and application of these methods has been largely confined to wind tunnel tests with clean axial inflow to the propellers. However, propellers installed on airplanes have flow non-uniformities caused by wing upwash, nacelle tilt, and fuselage and nacelle interference; pusher installations suffer greater inflow distortion from wing and pylon wakes. These installation effects lead to higher noise levels due to the increased acoustic radiation efficiency associated with unsteady blade loading.

The study of installation effects on propeller noise is still in its early stages because of the difficulty of obtaining reliable data and because of the inherent complexity of the problem. Rigorous analysis requires accurate methods for computing:

1. propeller inflow non-uniformity;
2. response of blade loading to that non-uniform flow; and
3. Noise due to the unsteady blade loads.

The 1980's, particularly, saw great strides in all three of these areas. For Item 1 above, flow fields for airplanes with complex geometry can now be computed. Details of nacelle flow including engine suction can be included. Regarding Item 2, powerful methods have been developed ranging from two-dimensional, compressible airfoil theories to 3-D panel methods and, further, to 3-D Euler analyses. For Item 3, noise theories have been advanced in both time domain and frequency domain of blade geometry. These analytical tools have made huge advances since the last extensive studies of installation effects on propeller aircraft. Now would be an excellent time to apply these advanced tools to the problem of installed propellers on civilian aircraft to obtain direction for reduced noise designs in the future.

Technical Approach: A number of typical installation categories should be

chosen including, for example, nose or fuselage mounted tractors, wing mounted tractors, wing mounted pushers, and fuselage mounted pushers. Each of these installations could be represented with geometry suitable for parametric studies. For example, an engine nacelle could be varied in steps from axisymmetric with no inlet suction to a more realistic form with suction. Trends of noise with variations in these parameters would be plotted to give design guidance regarding effects of installation geometry on propeller noise.

3. Acoustic Liner Improvements

Engine noise levels might be reduced by improvements to acoustic liners in several areas:

a. reduced sensitivity to environmental conditions such as grazing flow velocity and/or pressure gradient, which would permit liners to be optimized for both Approach and Takeoff conditions.

b. improved robustness for better protection against foreign object damage, including particularly ice shedding from fan blades on turbofan engines.

c. dual purpose liners combining sound absorption with ice melting or ice shedding capability. This could be very beneficial for turboprop powered aircraft.

In summary, new materials, configurations, and locations for treatment must be developed that produce minimum weight, volume, and performance penalty. Treatments may need to be tunable to be effective at several operating points. Small engines have little room for added treatment, so technologies to develop integrated treatment may be necessary. Optimal designs of nozzles, inlets, and nacelles may be needed for effective treatment installation.

4. Fan Noise Generation

Noise generation from the fan is the major contributor in modern high bypass ratio engines. To further reduce this noise source, it appears necessary to improve the understanding of its various generation mechanisms and their relative contribution. One such contribution which is not well understood results from potential flow field distortions generated by struts and supports downstream in the bypass duct.

The development of practical (i.e., simplified) procedures to measure acoustic modes could greatly help this understanding. The detailed application of computational fluid dynamic models to calculate the effect of flow field distortions should also be undertaken. Such fundamental work is of potential benefit to all fan engines of all bypass ratios.

5. Exhaust Noise Generation

Exhaust noise is composed of two major contributors; jet mixing and

internal core noise.

a. Small-engine forced exhaust mixing. Exhaust mixers present particular problems for general aviation sized engines which typically cruise at proportionally higher RPM, thrust and temperature (compared to takeoff) than do large engines. Detailed duct loss and effective flow areas need to be understood in advance to optimize engine spool-speed ratios and hence performance of general aviation fans. An experimental/analytical study could enhance the availability of jet mixer technology to small aircraft.

b. Core-noise generation study. An experimental study of core exhaust noise including combustion, turbine, and exhaust duct parameters could provide useful empirical noise generation models which would eventually be used to validate (future) theoretical models. Gains achieved in this area would benefit turboprop and turbofan powered aircraft on approach and would be particularly helpful for auxiliary power units.

6. Acoustic Excitation

An important noise source for certification may be structural and fluid resonances driven by acoustic sources. Airplane and engine component vibrations have been the source of customer complaints, and contribute to tone-corrected perceived noise levels. The development of tuneable structures may reduce the impact of resonances. The airframe noise produced by flaps and landing gear may become important on approach. Improved fluid computational methods are needed for the evaluation of acoustic resonances from non-uniform cavities. Reducing, with acceptable penalties, the noise generated by high-lift devices, landing gear and the like poses truly formidable challenges.

These recommendations comprise the majority of areas of concern evident to GAMA membership at this time. There are a number of other research subjects that individually do not appear to be as beneficial to noise reduction as those noted but collectively may provide additional relief. However, considering current fiscal demands on the government's operating funds, only noise reduction research that holds the most likelihood of success has been recommended.

NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC.

STATEMENT OF JONATHAN HOWE OF THE

NATIONAL BUSINESS AIRCRAFT ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SEPTEMBER 27, 1990

1200 Eighteenth Street NW Washington, DC 20036 (202) 783-9000 Telex: 904186 Fax: (202) 331-8364

Mr. Chairman, members of the Subcommittee, I am Jonathan Howe, president of the National Business Aircraft Association, an association representing nearly 7,000 companies which use business aircraft.

I appreciate this opportunity to express the views of business aviation as they relate to a National Noise Policy. Let me start with some specific comments, followed by a broad-based statement on noise policy.

STAGE 2 BAN

In general, the widely discussed phase-out of Stage 2 aircraft beginning in 1999 is reasonable. The already well established recognition that most Stage 2 aircraft weighing less than 75,000 lbs. make no more noise than many larger Stage 3 aircraft must continue. The European Community has adopted a 75,000 lb. exemption to the phase-out of Stage 2 aircraft, and it appears that the U.S. will do likewise.

Although a phase-out of Stage 2 aircraft beginning at the end of this decade would be reasonable, at the same time a firm stand must be taken against efforts of individual airports to ban Stage 2 operations ahead of the federal schedule. There have already been some alarming developments in this regard. An egregious example is the current ban on Stage 2 operations for all aircraft regardless of size at Long Beach, California. That airport could be serving as a major reliever for Los Angeles International. Instead it is driving traffic away to other airports that have their own noise concerns and may be tempted to follow suit. If individual airports are allowed to create their own timetables for phasing out Stage 2 aircraft, the result could be a proliferation of local bans that seriously undermine the federal plan.

Any consideration of Stage 3 restrictions are entirely premature. There has been no discussion with the industry and such restrictions would cause profound shock undermining the credibility of a national noise policy. The Stage 2 issue must be disposed of first. Stage 3 limitations are tantamount to airport curfews, since there is nothing quieter.

PART 150 STUDIES

The best way for an airport to address legitimate noise concerns of its neighboring communities is through the FAA Part 150 study. This also assures a balance between local and national interests. Such studies which are now voluntary should be made mandatory before any local noise restrictions can be implemented. FAA approval of the study must continue to be a part of this process.

FINANCIAL INCENTIVES

Financial incentives through AIP should be expanded to provide additional funding for implementation of Part 150 findings and other local actions such as zoning and easements which assure compatible land use. Of course no airport money should be allowed to go "downtown" or otherwise off the airport.

THIRD PARTY ACTION

A third party right of action is an indispensable measure to assure fairness to users in all airport matters, including noise.

FEDERAL LIABILITY

The fears of vastly increased federal exposure to noise related liability have been greatly exaggerated. Damages for such suits are already small, and importantly, are decreasing. Recent case law suggests further limitations exist in this area. Liability of

the Federal government is not likely to turn on the presence or absence of a national noise policy, especially if the government undertakes a regulatory and policy role as opposed to a proprietary one.

Today, noise is forcing a fragmentation of our national air transportation system. The lack of a national and uniform policy at airports across the country is unravelling our best efforts to find more capacity in an already strained system. The multitude of noise restrictions across the country has caused a "patchwork quilt" of airport access rules and gross inefficiencies in our air transportation system. The situation at Long Beach is but one of a number of examples of local access policies that are currently contributing to these inefficiencies. I think almost everyone will agree that the trend toward a fragmented system of access is not in the interest of the nation as a whole.

Let me make clear that my purpose today is not to assign blame to any group. I fully recognize that airport proprietors, responding to local pressures, have been obliged to fill a vacuum created by the lack of federal guidance and initiative.

None the less, in crafting a noise policy, the Federal government must be given the authority to exercise a greater degree of oversight of our nation's airports to assure a cohesive air transportation system. In so doing, a balance must be struck between the rights of airport proprietors and the needs of the national system.

Let me close by commending the Administration in its refreshing efforts to develop a national noise policy. By all accounts, they are well along in proposing a sound and well-balanced policy.

History reminds us often that the absence of a clearly defined national noise policy, balancing the public interest with that of users and airport proprietors has

resulted in needless confrontation and protracted litigation. With this in mind, I cannot overstate the need for the Administration and the Congress to join in establishing a comprehensive national noise policy.

Mr. Chairman, there is a vacuum in the area of noise, and it is the job of the Federal government to fill this void.

I would like to thank the Subcommittee for this opportunity to express the views of the National Business Aircraft Association on this important issue and I will be happy to answer any questions you might have.

BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
OF THE
U.S. HOUSE OF REPRESENTATIVES

Testimony of United Parcel Service Co.

With Respect to a

FEDERAL AVIATION NOISE POLICY

September 27, 1990

Communications with respect to these Comments should be addressed to:

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BEFORE THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
U.S. HOUSE OF REPRESENTATIVES

Testimony of Douglas R. Kuelpman
Manager of Public Affairs
United Parcel Service Co.

With Respect to a

FEDERAL AVIATION NOISE POLICY

Mr. Chairman and members of the subcommittee, United Parcel Service Co. ("UPS") appreciates this opportunity to present its views on the important subjects of airport access and aircraft noise. UPS is one of the largest cargo airlines in the world with one of the quietest fleets of any major air carrier, passenger or cargo. Despite UPS's extensive efforts in acquiring the quietest fleet possible, its operations are being affected adversely by the increasing proliferation of uncoordinated, locally imposed airport access restrictions. As the Federal government has vacated the field of airline economic regulation, local governments have been rushing to fill the void. Although these local airport access restrictions are imposed for environmental or noise control reasons, their economic impact on the national air transportation system is nonetheless significant. Even UPS, which has made an enormous commitment to quiet operations, is being adversely impacted by these restrictions.

I. UPS Commitment to Quiet Aircraft

UPS is spending billions of dollars to be a "good neighbor" and acquire the quietest fleet possible. There are few large carriers, passenger or cargo, with anywhere near UPS's percentage of Stage 3 aircraft in their fleets. In fact, among carriers with over 100 large jet aircraft, only American Airlines has a higher

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percentage (66 percent) of Stage 3 aircraft than does UPS (62 percent). By the end of 1990, UPS will own a fleet totaling 123 aircraft, 76 of which will be Stage 3. Given delivery schedules and order backlogs at the major aircraft manufacturers and major modification facilities, it would be virtually impossible to acquire Stage 3 aircraft any faster than UPS is acquiring them.

UPS's history of aircraft noise reduction and emissions control began in 1983 with the re-engining of its DC-8 fleet at an approximate cost of $16 million per aircraft. These re-engined aircraft are quieter than Stage 3 requirements.

In 1985, UPS became the launch customer of the cargo version of the 757, an aircraft widely recognized as one of the quietest Stage 3 jets in the world. Last year, UPS elected to fly its 747 fleet at reduced operational weights in order to comply with Stage 3 guidelines. These programs have been undertaken voluntarily and at considerable expense to minimize the environmental impact of UPS operations on local communities.

Earlier this year, a B-727-100 re-engining program was announced, which will cost UPS approximately $400 million. UPS is working with Rolls Royce to develope this new program, reducing noise, emissions, and fuel burn. These re-engined aircraft will operate at quieter levels than current Stage 3 requirements.

Nevertheless, despite this huge commitment to quiet operations, the continued viability of the UPS national and international system is threatened by the opening floodgates of inconsistent local restrictions.

II. Local Restrictions Limit the Free Flow of Commerce

One example of local economic regulation with an adverse impact on UPS is the regulation of flights at the John Wayne Airport in Orange County, California. The Orange County Board of Supervisors currently totally prohibits all-cargo carriers from operating there with what the Airport refers to as "A" or "AA" departure slots -- the type required for a cargo carrier to conduct an economically and operationally viable service. Cargo carriers are excluded even if they propose to use a quieter aircraft than those operated by passenger aircraft using these slots. At the same time that Orange County is excluding all-cargo carriers from these operations, passenger carriers at the John Wayne Airport are able to provide both express service and general freight service by utilizing their belly freight capacity, in direct competition with UPS and other cargo carriers. This is economic regulation -- and discrimination -- at its worst.

Another type of local regulation of extreme concern to UPS and the cargo industry is one where an airport requires that carriers convert a certain percentage of their operations at that airport to Stage 3 immediately. Los Angeles currently has such a rule under consideration and we understand that the Port Authority of New York and New Jersey as well as other airports are considering similar rules. At a number of airports, UPS operates only one B-727 flight daily. As discussed above, UPS is in the process of having these aircraft re-engined so that they will more than meet

Stage 3 requirements, but it is technologically and physically impossible to finish this task until at least 1995. If an airport, where UPS operates one of these B-727 flights, adopts an immediate 25% Stage 3 requirement, such a step amounts to an immediate 100% Stage 3 requirement for UPS. An aircraft can not be 25% Stage 3. An immediate 100% Stage 3 requirement at these airports would have a disastrous effect on UPS and on interstate commerce.

III. Impact on the UPS System

UPS has its principal domestic and international air hub at Standiford Field in Louisville, Kentucky. A new UPS East Coast regional air hub facility at the Philadelphia International Airport was placed into operation in 1989. UPS is currently expanding its West Coast regional air hub facility at Ontario, California and its Southwest regional air hub facility at the Dallas/Fort Worth Airport. In addition, UPS operates smaller air hubs at Des Moines, Iowa; Atlanta, Georgia; Newark, New Jersey; Bradley Field, Connecticut and Anchorage, Alaska. These air hubs currently handle a combined total of 280 daily operations, utilizing the UPS fleet of aircraft.

The UPS jet aircraft network operates into 73 U.S. airports. Approximately 240 smaller aircraft then fly to an additional 323 airports throughout the U.S. UPS Next Day Air and UPS International Air Shipments move from the origin airport to the Louisville air hub or to one of three regional air hubs, arriving between 11:00 p.m. and 2:30 a.m. the same night that those shipments are picked up. At each of these air hubs, the arriving aircraft are unloaded and the air shipments are sorted, consolidated and sent to their destination airport. Aircraft depart from the hubs the same night between 2:00 and 5:00 a.m. A similar sequence occurs during daylight hours in

connection with UPS 2nd Day Air shipments. As service commitments expand, it will be essential that UPS be able to expand operations not only at airports currently served but also into airports not currently served. Uncontrolled local access restrictions will limit or curtail service demanded by the shipping public.

Because of the extensive service network required by the UPS system in providing UPS Next Day Air service to every address in the U.S., timed connections in operating a successful hub-spoke system are exceedingly tight. Aircraft flight from across the U.S. must be meshed effectively. Decisions must be made regarding the handling of cargo if a flight is delayed for weather, maintenance or other reasons. These decisions can be made smoothly only if there is equality, predictability and flexibility in local airport access restrictions in conjunction with a standard national aircraft noise policy.

IV. Federal Preemption Rights

During consideration of the Airline Deregulation Act of 1978, a number of carriers testified concerning their fears that states and localities would rush to fill the regulatory void left by the Federal government (which is exactly what is happening). Economic regulation by one Civil Aeronautics Board was bad enough; economic regulation by hundreds of localities is unthinkable. Congress agreed with the carriers and enacted Section 105, the Federal Preemption provision of the Airline Deregulation Act.

Unfortunately, there is a growing body of law to the effect that there is no private right of action under this provision so that only the Federal government can move to enforce it. The Federal government is simply not equipped to monitor airport access regulations at every commercial airport in the United States, much less have the resources to bring lawsuits whenever a violation occurs.

It is the air carriers which are most severely affected by unfair, unreasonable and discriminatory airport access restrictions, and it is the air carriers which should have a private right of action to seek redress under the Federal Aviation Act.

V. Impact on the Air Freight Industry

The adverse impact of local airport access restrictions is particularly unfortunate given the growing importance of cost effective, reliable air freight and express service to the U.S. economy. The importance of the air freight industry economy can be seen in the phenomenal growth that the industry has experienced since deregulation in 1977. A comprehensive study of the all-cargo operators[1/] graphically demonstrates the dramatic growth experienced by these carriers. Among the more significant economic findings of the study are: (1) Annual air transportation revenues of over $9 billion -- 707% increase over 1977; (2) 414 million annual shipments — an eleven fold increase over 1977; (3) More than 105,000 full-time employees — a 483% increase over 1977; (4) 372 jet aircraft in service — a 530% increase over 1977; and (5) Almost $8 billion in fixed assets.

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1 The All-Cargo Air Carrier Industry, Its Economic Impact and Future Needs, April, 1989. Prepared by Leeper, Cambridge & Campbell, Inc. in conjunction with the ten leading U.S. cargo air carriers.

VI. Conclusion

UPS acknowledges the need for environmental conservation. Aircraft noise is one area where the well-established corporate commitment of UPS to the environment is apparent. However, in spite of this commitment, the spectre of local restrictions on access and noise threatens the ability of UPS to continue to provide the fast, dependable and economical air service its one million daily shippers need.

An increasing number of airports are adopting access restrictions as a protective measure. As airport proprietors see other airports around the country limiting Stage 2 operations, they are thinking that if they do not adopt similarly restrictive measures, all of the noisier aircraft are going to end up at their airport. Thus, in effect, airports are seeking to "dump" the noise somewhere else, not reduce overall noise which is what a realistic national noise policy would accomplish.

One important aspect of any federal policy in this area must be certainty. Carriers need certainty in order to invest the billions of dollars necessary to acquire quiet aircraft. Carriers deserve certainty that the investment made in aircraft now, will not be lost in the future.

UPS strongly urges that the Committee adopt measures that will allow for a reasonable transition to Stage 3 aircraft. UPS Realizes that the Committee must balance the needs of the shipping public with the concerns of airport neighbors. UPS believes that this can be accomplished by establishing a policy which addresses the following:

1. Guarantee that the investment in Stage 3 aircraft is protected by prohibiting local restrictions on the use of Stage 3 aircraft during their useful life, including restrictions on nighttime operations.

2. Allow for the use of Stage 2 aircraft during the phase-in of Stage 3 aircraft.

3. Provide for the phase-out of Stage 2 aircraft by a date no sooner than the year 2000.

4. Allow for a private right of action by carriers to seek redress under the Federal Aviation Act.

In conclusion, United Parcel Service Co. has made extensive efforts in acquiring the quietest fleet possible, and will continue those efforts. UPS is committed to being a "good neighbor" and to operating quieter aircraft. Nevertheless, despite these efforts, UPS is seeing ever increasing adverse impacts on its domestic and international system by the increasing proliferation of uncoordinated, locally imposed airport access restrictions having severe economic effects on the interstate commerce system. This direction must be reversed.

United States General Accounting Office

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Aviation Noise: A National Policy is Needed

Statement of
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Director, Transportation Issues
Resources, Community, and Economic
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Before the
Subcommittee on Aviation
Committee on Public Works
and Transportation
House of Representatives

GAO/T-RCED-90-112

GAO Form 168 (12/87)

Mr. Chairman and Members of the Subcommittee:

We are here today to present our assessment of the economic impact that noise restrictions have had and are likely to have on the aviation industry. We will also be discussing the policy issues that need to be resolved in developing a national noise policy. Our work was done at the request of the Subcommittee and Representative Vento.

Passage of the Airline Deregulation Act of 1978 led to an increase in the number of aircraft operations and the corresponding level of noise at many airports. This noise can impose substantial costs on the communities located near airports. Airport proprietors have reacted to the rising noise level by adopting noise restrictions on aircraft use that may, in some instances, restrict access to airports. We have issued several reports and testimonies dealing with aviation noise issues.[1]

The analysis we are presenting today is based on a survey we conducted of the 140 U.S. airports that have predominantly jet service; our analysis of various studies that have been done of the economic costs of noise restrictions; and an extensive series of interviews with airline, airport, and aircraft industry officials. A complete report on our work will be issued around the end of this year.

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[1]See, for example, Aircraft Noise: Implementation of FAA's Expanded East Coast Plan (GAO/RCED-88-143, Aug. 5, 1988), Aircraft Noise: Status and Management of FAA's West Coast Plan (GAO/RCED-89-84, May 8, 1989), Aircraft Noise: Eight Airports' Efforts to Mitigate Noise (GAO/RCED-89-189, Sept. 14, 1989), and Transportation Noise: Federal Control and Abatement Responsibilities May Need to Be Revised (GAO/RCED-90-11, Oct. 12, 1989). We will also be testifying this afternoon on a related set of issues before the Subcommittee on Transportation, Aviation, and Materials, House Committee on Science, Space, and Technology.

Overall, our review shows that, in the absence of a national noise policy, airports will likely continue to implement a variety of noise abatement measures in an attempt to respond to the concerns of their local communities. While these measures in many cases are needed to reduce the impact of airport noise on local communities, the lack of coordination among these local airport measures could place an increasingly heavy burden of higher costs and inefficient use of aircraft on the nation's air transportation system. A national policy specifying a schedule for phasing out the older, noisier stage 2 aircraft would provide for a more orderly transition, by a date certain, to a quieter stage 3 fleet for the nation as a whole.[2] The implementation of such a policy could pose trade-offs between meeting the needs of local communities and reducing the burdens which these needs impose on the nation's air transportation system.

Specifically, we found the following:

-- Based on our survey, the number of airports requiring the use of the quieter stage 3 aircraft will grow slowly until 1995, but will increase rapidly between 1995 and 2000. Our survey shows that, by the year 2000, 41 percent of the nation's 29 largest airports plan to have banned stage 2 aircraft.

-- The costs of delays and inefficient use of aircraft imposed on airlines by the uncoordinated adoption of noise restrictions by airports appear to be modest now. However,

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[2]Part 36 of Title 14 of the Code of Federal Regulations prescribes noise emission standards for the manufacture and certification of aircraft. Aircraft which do not meet these standards are commonly referred to as "stage 1" aircraft. These relatively noisy aircraft were no longer generally allowed to be operated in the United States after 1984. Aircraft meeting minimal standards issued in 1968 are commonly referred to as "stage 2." Quieter aircraft meeting more stringent standards promulgated in 1977 are commonly referred to as "stage 3."

we expect the proliferation of these noise restrictions after 1995 to cause these costs to grow rapidly.

-- The aircraft and airline industries believe they have the capacity to phase out stage 2 aircraft by the year 2000, but said they will need 10 years advance notice to achieve this goal. We estimate that the costs of phasing out stage 2 aircraft by 2000 are likely to fall between $2 billion and $5 billion, depending on whether airlines replace or retrofit their existing stage 2 fleets.[3]

-- The federal government will have to establish a national noise policy now if it wants the aircraft and airline industries to phase out stage 2 aircraft in an orderly fashion. The proliferation of uncoordinated airport noise restrictions after 1995 is likely to create growing costs in inefficient use of aircraft. A national schedule for phasing out stage 2 aircraft will permit a more orderly phase-out of stage 2 aircraft and allow the nation to achieve a quiet stage 3 fleet.

I will now discuss our findings in greater detail.

LOCAL NOISE RESTRICTIONS EXPECTED TO PROLIFERATE AFTER 1995

The Federal Aviation Administration (FAA) is authorized, under 49 U.S.C. Section 1431, to regulate aircraft noise. In 1976, FAA issued regulations under this provision requiring that all aircraft used at U.S. airports meet stage 2 standards starting in 1985. FAA also required that all aircraft designs newly certified after 1977 meet more stringent stage 3 standards; as a result, all aircraft now being built are stage 3 aircraft. However, the FAA's

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[3]All values are expressed in constant dollars.

regulations do not require the airlines to replace their old stage 2 airplanes with the quieter stage 3 aircraft. Airlines can buy or lease used stage 2 aircraft to expand their fleets. Airports, on the other hand, can set more stringent noise standards, and a number of airports, in response to pressures from local communities affected by aircraft noise, have done so. While noise restrictions are expected to spread slowly between now and 1995, our survey shows that airport officials expect these restrictions to proliferate between 1995 and 2000.

We surveyed airports to determine what noise restrictions they had now, what restrictions they expected to introduce between now and 1995, and what restrictions they expected to introduce between 1995 and 2000. We found that only three of the 140 airports in our survey currently ban the use of stage 2 aircraft.[4] Another 16 airports restrict their use by limiting the percentage of stage 2 aircraft used by each airline and/or by banning them at night. By 1995, only one additional airport told us that it is very likely to become all stage 3, while another 13 indicated that they are somewhat likely to. However, by 2000, 34 additional airports are very likely to become all stage 3, including 12 of the 29 largest airports. Seventy-seven airports are at least somewhat likely to ban stage 2 aircraft by 2000, including 20 of the 29 largest airports.

Representatives of the airline industry believe that if a substantial number of large airports adopt rules banning stage 2 aircraft, these rules will amount to a de facto ban on stage 2 aircraft anywhere in the country. Aircraft are normally scheduled to fly to a number of different airports as part of their regular routing. If a significant proportion of the airports require all stage 3 aircraft, an airline will have to acquire an all stage 3

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[4]They are Orange County, Long Beach, and Burbank airports in California.

fleet (by replacement or retrofitting) or be burdened with an inefficient routing system designed to steer stage 2 aircraft away from all-stage-3 airports.

UNCOORDINATED AIRPORT NOISE RESTRICTIONS ARE LIKELY TO IMPOSE GROWING COSTS ON AIRLINES

The independent and uncoordinated imposition of local noise restrictions by the nation's airports is often characterized by airline industry officials as a "patchwork quilt" style of regulation. Airline industry officials generally believe that this style of regulation threatens the efficient functioning of the national transportation system by causing delays and the uneconomic use of aircraft to service certain markets.

Nighttime noise curfews sometimes compound the effects of delays of evening flights caused by bad weather. If the delayed flight is using a stage 2 aircraft, which cannot operate after the curfew, the flight either will have to be cancelled or will have to be redirected to an alternative airport not subject to a curfew. If the flight is redirected, passengers are further delayed in reaching their destination. Alternatively, if mechanical problems ground a stage 3 aircraft, and the only back-up plane is stage 2, the flight might have to be cancelled. An official representing the air freight industry noted that nighttime restrictions strike directly at the ability of air cargo carriers to provide overnight service.

Scheduling of aircraft for particular flights sometimes results in inefficient use of aircraft, because the limited number of stage 3 aircraft must be used at the airports that require their use, rather than in the markets where their size is most appropriate. For example, airlines cited examples of being forced to use B757 (stage 3) aircraft to meet noise restrictions when smaller B737 (stage 2) aircraft would be better suited to traffic levels in the market. Other carriers cited being required to use

(stage 3) B737-300s instead of more appropriately sized (stage 2) DC-9s to meet noise restrictions.

Air carrier officials also told us that aircraft require less thrust and generate less noise when they are less than fully loaded. As a result, noise restrictions that are specified in terms of allowable decibels (rather than in terms of the aircraft being stage 2 or stage 3) sometimes cause airlines to fly planes with less than a full load to reduce noise. This limits the airlines' ability to make the most efficient use of their aircraft. For example, one carrier flies B737-300s out of Orange County Airport in California with less than full loads to meet the noise restrictions there.

These costs arise as a result of having to meet separate restrictions at each airport. They would not arise if the same amount of noise reduction were achieved as a result of the airlines being required to meet national requirements that a certain percentage of their fleet meet stage 3 standards.

These costs have caused some air carriers to reduce service on some routes involving noise-controlled airports. Carriers reported reducing service, for example, at Orange County, Long Beach, San Francisco, and Boston as a result of noise restrictions. One airline abandoned a route because it would have had to make uneconomic use of its stage 3 aircraft, which were larger than the route required. While the number of such cases that have been reported to us so far has been small, further service cutbacks may occur as additional airports impose noise restrictions.

The extent of these costs under present conditions appears to be moderate. While the airlines were able to provide examples of many of these costs, they were not able to quantify the extent of these costs. However, these costs are expected to increase in the

future as the number of airports with noise restrictions increases, particularly after 1995.

Local airport noise restrictions may also affect other airports because the imposition of noise restrictions at one airport could cause "dumping" of older, noisier aircraft on other airports. Our survey indicated that 23 airports reported receiving higher levels of noise as a result of the imposition of noise restrictions at other airports. Conversely, 24 other airports reported they were experiencing lower levels of noise, suggesting that the requirement to use stage 3 aircraft at some airports made those aircraft available at other airports as well.

A BAN ON STAGE 2 AIRCRAFT IS FEASIBLE, BUT WILL COST $2.2 - $4.6 BILLION

The aircraft and airline industries believe they have the capacity to phase out stage 2 aircraft by the year 2000, but said they will need 10 years advance notice to achieve this goal. We estimate that the costs of phasing out stage 2 aircraft by 2000 are likely to fall between $2 billion and $5 billion, depending on whether airlines replace or retrofit their existing stage 2 fleets.

Stage 3 Technology Availability

Air carriers can convert their fleets to stage 3 by replacing stage 2 aircraft with new stage 3 aircraft or by retrofitting their stage 2 aircraft with hushkits or new engines. According to airline officials, 10 years is the minimum lead time needed to accomplish such a transition. Although aircraft manufacturers presently have a 5-6 year backlog of orders, officials of Boeing, McDonnell Douglas, and Airbus (representing 95% of commercial aircraft manufactured) told us they believe production rates are capable of meeting a 10-year lead time.

Engine and hushkit manufacturers also told us they believe a 10-year lead time would be adequate since they can increase production capacity as demand increases. They also said that the necessary retrofit technology either is or will be available. Technology which has not yet been certified, such as hushkits for the stage 2 DC-9 and B737, is expected to be certified for production by the FAA within the next few years.

Costs of a Stage 2 Ban by 2000 Are Likely to Be $2.2 - $4.6 Billion

Four organizations have studied the cost of a stage 2 ban. The four studies were all reported in 1989 and were conducted by the FAA; American Airlines; AVMARK, Inc.; and Leeper, Cambridge, and Campbell, Inc. (LCC), on behalf of the air cargo industry.[5] The FAA and American Airlines studies reported similar estimates of $2.7 billion and $3.1 billion, respectively, for the cost of meeting stage 3 requirements in the year 2000, assuming a 30-year useful aircraft life. The AVMARK study reported a much higher estimate of $59.6 billion, while the LCC study estimated costs of $15.9 billion for the air cargo fleet alone.

Different Assumptions Result in a Range of Cost Estimates

The wide range of cost estimates in these studies reflects differences in key assumptions concerning the useful life of an aircraft, the discount rate used to compare costs and benefits occurring in different years, the growth rate of the airline industry, and the extent to which airlines can meet stage 3 standards by using hushkits or new engines rather than by replacing aircraft.

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[5]A fifth study, by the International Civil Aviation Organization (ICAO), did not conduct an original analysis of the U.S. market; it reported the results of the FAA study.

Two of the studies, by LCC and AVMARK, report very high estimated costs. These high cost estimates result from three key assumptions. First, both LCC and (implicitly) AVMARK assume that aircraft have infinite useful lives, so they would never have to be replaced in the absence of a stage 2 ban. Second, AVMARK assumes a zero discount rate, so that costs occurring in the distant future are weighted just as heavily as costs appearing this year. Third, LCC assumes that the growth rate of the air cargo industry will be 15-20 percent per year. When these assumptions are changed to better reflect a consensus of expert opinion on aircraft life spans, discount rates, and growth rates, their estimates change to approximately the level of our estimates. We present a detailed analysis of the impact of these different assumptions in appendix I to this statement.

We have developed our own estimates based on our review of all four studies. We used the FAA study as our starting point, but we used alternative assumptions when we thought they were more appropriate.

Assuming that stage 3 standards would be achieved by replacing non-complying aircraft, we estimated the cost of a stage 2 ban in 2000 as $4.6 billion. This is the capital (or present value) cost in 1990 of retiring stage 2 aircraft before they would have been retired in the absence of the stage 2 ban. It includes replacing 2,039 aircraft prematurely at an average cost of premature

retirement of $2.2 million each.[6] It is based on the FAA model, except that three assumptions have been changed:

-- First, we assumed a real discount rate of 7.6 percent. The four studies used discount rates ranging from 0 to 9 percent; we concluded that 7.6 percent was most appropriate.[7]

-- Second, we assumed an economically useful life of passenger aircraft of 30 years. This is equal to the 30 years assumed by American Airlines, and is the center point of the 25, 30, and 35 year assumptions used by FAA. For cargo aircraft, however, we assumed a longer useful life of 50 years, reflecting the fact that cargo aircraft are used for fewer cycles per day, and thus can be expected to last for more years. We believe this is more reasonable than LCC's assumption that cargo aircraft have unlimited economically useful lives.

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[6]The cost per airplane of premature replacement is substantially smaller than the price of a new airplane for three reasons: (1) these costs are net of operating and maintenance savings which result from using a new airplane; (2) these are only the costs of replacing the aircraft prematurely--they deduct replacement costs to the extent that the old aircraft's useful life has been used up; and (3) most of these costs will be incurred several years in the future, and their present value is less than their value at the time that they are incurred. The average cost per aircraft replaced varies widely. Some aircraft, such as DC9-50s delivered in 1981, would have relatively high replacement costs ($6.83 million each). However, most of the aircraft that would be replaced are older aircraft nearing the end of their useful lives, so the cost of premature replacement will be small.

[7]Our assumed discount rate was the commercial prime rate, plus a 1.5-percent risk premium, minus the GNP deflator (which measures the overall rate of inflation in the entire economy). We believe this best measures the real private opportunity cost of money for firms like major airlines.

-- Third, we assumed, using an estimate by the Boeing Corporation, that the air cargo portion of the overall U.S. civil air fleet will grow at 6 percent per year through 2000. This is faster than the 1.9 percent per year growth rate projected by FAA for the industry as a whole, but slower than the 15-20 percent growth rate for the air cargo fleet assumed by LCC. We adopted Boeing's 6-percent estimate because it seemed reasonable and appeared to be based on more substantial analysis than LCC's estimate. The faster growth rate for the air cargo fleet, with its longer expected useful life, implies that the costs of a stage 2 ban will be increased.

Alternatives to Aircraft Replacement Could Reduce the Cost of a Ban

The cost of a stage 2 ban would be significantly reduced if alternatives to aircraft replacement were followed. For example, new aircraft sell for approximately $25 million to $50 million or more. However, existing stage 2 aircraft can meet stage 3 requirements by installing new engines for about $9 million to $11 million. In some cases, hushkits can be installed on existing engines at a cost of about $1 million to $3 million per aircraft. According to the FAA, allowing hushkits when available results in a 41-percent savings, on average, versus requiring aircraft replacement. The savings are less than the difference in cost because new aircraft have lower maintenance and fuel costs than do retrofitted aircraft.

We did our own calculation assuming that airlines would adopt the cheapest strategy for each type of plane--either replacement, re-engining, or hushkitting. This calculation resulted in a (present value) cost estimate of $2.2 billion. It includes replacing 471 aircraft, at an average cost of $0.3 million, and

retrofitting 1,569 aircraft, at an average cost of $1.2 million.[8] Our analysis suggests that the oldest stage 2 planes are most likely to be replaced, while newer planes are more likely to be brought into stage 3 compliance by hushkitting or re-engining. The exact proportion of aircraft that are retrofitted rather than replaced is uncertain, but we think the actual costs of achieving the stage 2 ban are likely to fall between $2.2 and $4.6 billion, spread out over 10 years. To put these costs in perspective, total industry revenues in 1988 were about $65 billion. Total revenues for the 10-year period over which these costs of noise abatement will be borne are likely to exceed $650 billion, so the costs of noise abatement are likely to be less than 1 percent of the industry's revenues.

A Stage 2 Ban by the Year 2000 Will Affect Individual Air Carriers Differently

Although industry officials generally believe a year 2000 stage 2 ban is achievable, they also believe that the impact of a stage 2 ban on individual airlines will depend on the size of each carrier's stage 2 fleet and on its financial health. Some airline officials said they are planning to acquire stage 3 fleets before the year 2000 even without a ban; others believe meeting that date may require them to downsize their operations and could inhibit their growth plans.

The costs of phasing out stage 2 aircraft are likely to be borne partly by the airline industry, in the form of lower profits, and partly by airline passengers. Since many airline passengers are very price-sensitive, the airlines will probably not be able to pass on all the costs of the stage 2 ban to their customers and

[8]When retrofitting is an option, average costs of replacement fall, because only the oldest aircraft, with the fewest years of useful life (and hence the lowest replacement costs) are replaced. Newer aircraft are retrofitted.

will have to bear a substantial portion of the cost themselves. Some financially weak airlines may be further weakened by the costs of complying with a stage 2 ban.

Airline passengers are likely to experience both reduced service and higher fares as a result of a stage 2 ban. Carriers may not find it profitable to replace or retrofit all the old stage 2 aircraft in service, thus limiting the overall size of their fleets. This is likely to reduce the level of service that can be provided and the level of competition on some routes. Some carriers have stated that they have already reduced service on certain routes because they do not have enough stage 3 aircraft to meet the noise restrictions at the airports on the route. However, because of the relatively low cost of a stage 2 ban, the extent of service cutbacks is likely to be small also.

Fares are likely to rise both because of the costs of replacing and retrofitting aircraft, and because of the reduced levels of competition on some routes. However, because of the small relative cost of a stage 2 ban, the size of these fare increases is likely to be modest.

POLICY ISSUES FOR CONGRESSIONAL CONSIDERATION

We believe that the key issues that need to be resolved by the Congress in formulating a national noise policy are (1) how soon stage 2 aircraft should be phased out; (2) what other actions are needed besides a phase-out of stage 2 aircraft; and (3) to what extent should federal noise regulation preempt local airport restrictions.

How Soon Should Stage 2 Aircraft be Phased Out?

Our interviews with airline and aircraft industry officials indicate that phasing out stage 2 aircraft by the year 2000 is

feasible. Most passenger airlines indicate that they plan to phase out stage 2 aircraft voluntarily between 2000 and 2010. However, our survey of airports suggests that, in the absence of any federal action, a large proportion of the nation's largest airports are likely to prohibit the use of stage 2 aircraft by the year 2000. In these circumstances, the airline officials we spoke with believe that a de facto stage 2 ban will result, because airlines will not be able to use stage 2 aircraft at enough airports to operate such aircraft efficiently.

Federal policy could delay this phase-out by preempting noise restrictions adopted by airports that would effect a year 2000 ban. The issue for federal policy is whether to adopt the year 2000 as a reasonable date for phasing out stage 2 aircraft, or whether to prevent airports from adopting this or some earlier date. Our analysis suggests that the cost of adopting this date would amount to about 1 percent of airline industry revenues over the next 10 years.

What Other Actions Are Needed Besides a Phase-out of Stage 2 Aircraft?

A ban on stage 2 aircraft is an example of noise abatement, that is, reducing noise at the source. A variety of other strategies to reduce noise are also available that focus on mitigating the impact of noise on the people who are exposed to it, for example by soundproofing homes and schools, buying homes that are affected by noise, and improving land-use planning. Noise abatement is more cost-effective than noise mitigation when an airport is located in an urban area where large numbers of people are affected by aircraft noise, because the costs of quieting the aircraft reduce noise for a large number of people. By contrast, the cost of reducing noise exposure by, for example, soundproofing homes in a large metropolitan area is so large that this is not a viable alternative to noise abatement.

However, there are limits to a noise abatement strategy. Aircraft manufacturers do not believe it is possible to make aircraft significantly quieter than the quietest aircraft being built today (though National Aeronautics and Space Administration researchers believe that a long-term research project might develop new noise control technologies). Even these relatively quiet aircraft cause a high level of noise exposure for people who live close to the airport. FAA estimates that 1.1 million people will continue to be exposed to excessive noise levels even if stage 2 planes are banned. The only way to reduce aircraft noise to reasonable levels close to an airport is through a combination of noise abatement and noise mitigation measures. Programs such as FAA's Part 150 program, which pays for noise mitigation, will continue to be needed even if a stage 2 ban is adopted.

Should the Federal Government Preempt Local Airport Restrictions?

The federal government has prohibited the use of stage 1 aircraft at U.S. airports, but beyond that has generally left the adoption of noise restrictions to individual airports. Airports participating in FAA's Part 150 program must have their noise control plans approved by the FAA. But airports are not required to participate in the Part 150 program, and many do not. FAA may sue an airport if it regards the airport's noise control program as unfairly discriminatory. In a few cases (for example, in a case involving San Francisco's airport) FAA has done so, but generally FAA has not contested noise restrictions adopted by the airports.

Leaving the responsibility for noise regulation to the airports has some advantages. Airports vary greatly in how sensitive their neighbors are to noise. One airport may be under great pressure to reduce noise from its neighbors, and may be willing to suffer a substantial reduction in service in order to

reduce noise. Other airports may place a greater value on high service levels than on noise reduction, and may favor a less restrictive noise policy. Leaving noise regulation to the airports allows each airport to tailor its noise policy to its own individual situation. The benefits of noise reduction are greatest when the noise reduction is concentrated on airports that are most sensitive to noise.

On the other hand, our analysis shows that the potential for inefficient use of the nation's air transportation system as a result of a "patchwork quilt" style of regulation by individual airports exists and is likely to become much more significant as airport restrictions proliferate after 1995. It is much more difficult for the nation's airlines to meet uncoordinated airport requirements--a 50-percent stage 3 requirement at this airport, a 75-percent stage 3 requirement at that airport, and a 100-percent stage 3 requirement at yet another--than to meet a national requirement that a certain percentage of the airline's overall fleet in any one year be stage 3. If an airline meets an overall fleet requirement, then it is free to schedule those aircraft through its system in a cost-effective and efficient way.

Establishing a uniform rule, of course, would require preventing airports from adopting rules that were stricter than the federal rules. Preemption would prevent airports from tailoring noise restrictions to each area's sensitivity to noise. If airports were preempted from adopting stricter rules, their neighbors would be forced to accept more noise than the airport's own rules would have allowed. If the increased noise burden were attributable to federal preemption, plaintiffs might seek to hold the federal government liable for damages caused by the extra noise.

The extent to which the federal government would become liable for damages due to aviation noise in the event that it preempted

local restrictions is uncertain. State and local governments, as commercial airport proprietors, are responsible for obtaining the necessary air easements from surrounding land owners as well as fashioning reasonable and nondiscriminatory noise rules for airport operation. Therefore, under present law, states and localities, not the federal government, are responsible for injuries resulting from airport noise.

Federal preemption of these local airport noise rules would remove the localities' ability to abate noise and thus the basis for liability for injury. As a result, the federal government could be liable for "takings" and torts arising from airport noise.[9]

Because the federal government has never before been exposed to liability for regulating commercial airport noise, and because liability for either a taking or a tort is dependent upon the facts in an individual case, we cannot predict whether an injured party could successfully sue the federal government for airport noise. However, we can outline the context within which such a suit might take place.

In order to show that aircraft flights over private property constitute a taking, the owner must demonstrate that the flights are so low and frequent as to cause direct and immediate interference with the use and enjoyment of the land. Landowners have successfully sued the United States, in its capacity as airplane operator, in a number of instances where planes were repeatedly flying at altitudes below 1,000 feet and where the plane passed directly over the property.

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[9]The Fifth Amendment to the Constitution prohibits the government's taking of private property for public use, that is, the direct and immediate interference with the use and enjoyment of property, without just compensation. A tort is an injury or wrong to the person or property of another; it is the breach of a duty fixed by law, independent of contract.

Under the doctrine of sovereign immunity, the federal government is not liable for torts, except where it has waived its immunity. The Federal Tort Claims Act (28 U.S.C. Sections 1346 and 2671-2680) waives the federal government's sovereign immunity in a limited number of cases. With respect to federal regulation of airport noise, there are two barriers that a plaintiff would have to overcome before being able to bring a tort suit against the federal government. First, no suit may be maintained based on discretionary government acts, and second, suits must be based on the negligent or wrongful act or omission of a government employee.

Determinations of whether a particular governmental function is discretionary depend upon the specific facts. Thus it is not possible to provide a definite answer on potential federal liability. However, as a general matter, the development of noise standards that balance local and national interests would appear to be discretionary and thus exempt from suit.

Assuming, however, that FAA's actions were not exempt, a plaintiff would still have to show that the government employee was negligent. It is not enough that state law provides a remedy in tort. Suits based on damages caused by airplane noise cannot be brought against the federal government absent a showing that the noise was caused by the wrongful act of a government employee.

The extent of preemption could be limited by "grandfathering" existing restrictions--that is, allowing airport restrictions already in place to continue, but preempting any new airport restrictions that were more stringent than the federal rules. This would ensure that no airport experienced an increase in noise as a result of the federal stage 2 ban. Grandfathering would, of course, reduce the degree of uniformity among airports and the benefits that uniformity would provide. However, since the number of airports with existing limitations on stage 2 aircraft is

relatively small, and to date the airlines appear to be managing with these "patchwork" costs relatively easily, this may not be too costly.

The Congress might also wish to allow an exemption process by which airports that believed their local circumstances justified a more rapid phasing out of stage 2 aircraft could apply for an exemption to allow them to adopt restrictions more stringent than the national rules. This, again, would reduce the degree of uniformity in the national system, but would allow some degree of variation to reflect local variations in sensitivity to noise. Such an exemption process would require a weighing of local noise concerns against national air commerce objectives, which could be difficult to achieve.

CONCLUSIONS

In conclusion, Mr. Chairman, the cumulative effect of additional, independently derived, and uncoordinated local airport noise restrictions could create a serious cost burden on the nation's air transportation system after 1995. While the extent of these costs is not documented, airlines have stated that the current patchwork quilt pattern of local noise restrictions imposes costs and inefficiencies on the system. Based on our work, these costs appear likely to become much more serious as local restrictions proliferate after 1995.

In our view the FAA should make every reasonable effort to develop a national noise policy that balances the concerns of airports, airlines, local communities, and the nation's air transportation system. A key component of such a national policy would be a year-by-year phase-out of stage 2 aircraft, culminating in a ban on stage 2 aircraft by approximately the year 2000. Our analysis indicates that the cost of such a ban would be in the $2

to $5 billion range, depending on whether airlines replace or retrofit their existing stage 2 fleets.

This concludes our statement, Mr. Chairman. We would be pleased, at this time, to answer any questions that you or the other members of the Subcommittee may have.

ANALYSIS OF COST STUDIES

Four organizations have conducted major studies to determine the cost of a stage 2 ban. The studies were all reported in 1989 and were conducted by the FAA, American Airlines, AVMARK, Inc., and Leeper, Cambridge, and Campbell (LCC), Inc.[1] AVMARK is an aviation consulting firm whose clients own and operate commercial aircraft. LCC is a consulting firm whose study was conducted at the request of the Air Freight Association.

The American Airlines study focused on the nine major airlines; it did not consider the effect of a ban on smaller carriers or the air cargo industry. The FAA and AVMARK studies focused on the entire U.S. domestic fleet, both passenger and air cargo. LCC's study focused exclusively on the air freight industry.

DIFFERENT ASSUMPTIONS RESULT IN A RANGE OF COST ESTIMATES

The FAA, American Airlines, and AVMARK studies each reported a range of cost estimates. For example, by varying the assumptions about expected aircraft life and the proposed date of a stage 2 ban, the FAA study estimated the costs under 12 different scenarios. LCC's study, on the other hand, reported a single estimated cost for the air cargo industry.

Depending on the assumptions used, the estimated costs ranged from a low of $17 million to a high of almost $60 billion. To illustrate the effect of different study methodologies, we selected a "base case" scenario for comparison purposes, namely, that a

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[1]A fifth study, by ICAO, did not conduct an original analysis of the U.S. market; the study reported the results of the FAA study.

stage 2 aircraft ban will be implemented in the year 2000. Under this scenario, the cost estimates range from $2.7 billion (FAA study) to $59.6 billion (AVMARK study). Table I.1 illustrates the varying results under the base case scenario as well as under other assumptions.

Table I.1: Summary of Study Results
(in billions of constant dollars)

	FAA	American Airlines	AVMARK	LCC
Base case scenario[a]	$2.7	$3.1	$59.6	$15.9
Range of costs:				
High	$5.8	$3.1	$59.9	$15.9
Low	$0.017	$0.53	$22.5	$15.9

[a]The base case scenario assumes a year 2000 stage 2 aircraft ban and a 30-year useful aircraft life.

Given the common assumptions of the base case scenario, the remaining variations in the cost estimates resulted from the different cost estimating methodologies employed in the studies, as well as from different assumptions regarding the useful life of stage 2 aircraft and the expected fleet size in the year 2000.

STUDIES EMPLOY DIFFERENT ESTIMATING METHODOLOGIES

The FAA and American Airlines studies each assumed the cost associated with a stage 2 ban to be the incremental cost of retiring an aircraft early minus any savings associated with operating new, more efficient, replacement aircraft. For example, if an aircraft had to be replaced one year before it would normally be replaced, the cost attributable to the ban would be the cost of requiring the capital expenditure one year earlier than would have normally occurred, minus the discounted value of savings in

operating and maintenance costs incurred by substituting a new aircraft for an older one. From an economic perspective, this is the correct approach to modeling this problem.

LCC and AVMARK used different approaches. LCC's study stated that the cost of a ban would be the full capital cost of the replacement aircraft minus any operating and maintenance savings. Although recognizing that aircraft must eventually be replaced, LCC argued that there are no technical reasons why an aircraft can't be maintained for safe use indefinitely and that, consequently, any forced retirement should result in the full cost of the replacement aircraft being charged to the ban. AVMARK's study assumed a 30-year aircraft life; however, under its methodology, if an aircraft had to be replaced before it was 30 years old--even one year before--then the entire cost of the replacement aircraft was attributed to the ban. Attributing the entire cost of replacement aircraft to the ban resulted in substantially higher cost estimates than resulted from the FAA and American Airlines methodologies.

The methodologies employed by LCC and AVMARK both, in essence, assume that used aircraft have an indefinitely long economic life and therefore do not depreciate in value. They implicitly assume that old aircraft would never be replaced in the absence of a government intervention requiring their replacement. Consequently, their studies argue that the full cost of replacement aircraft should appropriately be charged to the event--the ban--which led to the need for replacement. This assumption is not consistent with the fact that old aircraft are constantly being replaced even in the absence of any government requirement, primarily because, as aircraft age, the costs of maintenance and repair become greater than the costs of buying a new airplane.

In our analysis, we followed the methodology of FAA and American Airlines, and charged costs of replacement to the stage 2 ban only to the extent that they caused aircraft to be replaced prior to the expiration of their useful lives.

In their studies, the FAA, American Airlines, and LCC discounted future expenditures in order to express them as current dollars. This is a common practice in analyzing expenditures over time. The FAA, American Airlines, and LCC studies assumed discount rates of 7 percent, 9 percent, and 6.2 percent, respectively. AVMARK did not discount future costs (i.e., they assumed a zero discount rate). These assumptions affect costs since a discount rate which is too low tends to overstate both costs and benefits (the benefits include reduced operating and maintenance costs) of replacement, while one which is too high understates costs and benefits. We assumed that the real discount rate would equal 7.6 percent, which is the prime lending rate plus a 1.5 percent risk premium minus inflation as measured by the GNP deflator. We used that rate to recalculate the present value of the costs reported in each study. Table I.2 illustrates the results.

Table I.2: Costs Adjusted to Present Value Terms
(In Billions of Dollars)

	FAA	American Airlines	AVMARK	LCC
Reported Costs	$2.7	$3.1	$59.6	$15.9
Adjusted Costs	2.7	3.3	43.8	15.0
Difference	$0.0	($0.2)	$15.8	$ 0.9

AIRCRAFT USEFUL LIFE
ASSUMPTIONS AFFECT COST ESTIMATES

Assumptions about aircraft useful life are also important in estimating the cost of a stage 2 aircraft ban. The useful life of

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an aircraft depends on how intensively it is used. A cargo aircraft, for example, which is flown fewer cycles (one takeoff and landing) per day than a passenger aircraft, can be expected to be economically useful for more years. This is a significant variable because the number of useful years removed from an aircraft's life by a stage 2 ban is a major determinant in the total cost of such a ban.

The American Airlines study assumed a 30-year useful life while the FAA study assumed a 25-35 year useful life. The LCC study, as noted previously, argued that aircraft can be maintained for safe use indefinitely and therefore did not assign a useful life. The AVMARK study, while assigning a 30-year useful life, agreed with the LCC study that aircraft can be maintained indefinitely.

While the technical life of an aircraft is, as LCC and AVMARK suggest, indefinite, the economically useful life is definitely limited. The economic life extends only to the point when it becomes cheaper to replace the aircraft with a newer aircraft rather than to make repairs. The economically useful life is likely to become shorter as a result of new and planned FAA Air Worthiness Directives, which will require ever more frequent and costly maintenance procedures for older aircraft. Neither LCC nor AVMARK explicitly considered these additional costs in their studies.

In our analysis, we adopted the assumption of a 30-year useful life for passenger aircraft, but assumed that cargo aircraft would have a longer useful life of 50 years. This appeared to be the longest useful life that is consistent with actual practice.

EXPECTED AIRCRAFT FLEET SIZE CRITICAL TO ESTIMATED COSTS

A critical assumption in the LCC study is that the air freight industry will grow substantially in the next 10 years. LCC assumed that the fleet of 254 stage 2 aircraft owned by the air freight industry in 1987 would increase 20 percent annually through 1992, and thereafter 15 percent annually through the year 2000, resulting in a fleet of 1,933 stage 3 aircraft at that time. This assumption of rapid growth adds appreciably to the cost of a ban as calculated in the LCC study, particularly since LCC charged the full, undiscounted cost of replacement aircraft to the ban.

Several other studies have suggested that the rate of growth in this industry will be substantially less. The FAA estimates that the entire U.S. fleet will grow at the rate of 1.9 percent annually. The American Airlines study suggests that fleet growth will be only "a few" percent annually, and aircraft manufacturers forecast growth in the air cargo fleet at less than 6 percent annually.

We analyzed the impact of LCC's growth assumptions by substituting different growth rates. Using a growth rate of 1.9 percent annually would result in a fleet of 318 aircraft instead of the 1,933 calculated by LCC. The adjusted cost estimate, in present value terms, would be $1.8 billion instead of $10.9 billion. A growth rate of 6 percent would result in 511 planes and an adjusted cost of $2.8 billion. In our analysis of costs for the overall civil transport fleet, we assumed that the air cargo fleet would grow by the 6 percent per year estimated by Boeing. We assumed that 1.9 percentage points of this growth would come through purchases of new stage 3 aircraft, as FAA assumed. We

assumed that the remaining 4.1 percentage points would come through purchases of used stage 2 aircraft.

We adjusted the estimates in the four studies to reflect what seemed to be the most reasonable assumptions, namely:

-- incremental cost of early retirement (rather than full replacement cost);

-- a 7.6 percent discount rate;

-- a 30-year useful life for passenger aircraft, but a 50-year useful life for cargo aircraft;

-- a 6-percent growth rate for the air cargo fleet, including 1.9 percent growth supplied by purchases of new stage 3 aircraft, and 4.1 percent supplied by purchases of used stage 2 aircraft.

These assumptions resulted in a cost estimate for replacing all stage 2 aircraft by the year 2000 of $4.6 billion. This is the present value in 1990 of the costs of premature replacement through the year 2000.

ALTERNATIVES TO AIRCRAFT REPLACEMENT COULD REDUCE THE COST OF A BAN

The cost of a stage 2 ban would be significantly reduced if alternatives to aircraft replacement were followed. For example, new aircraft sell for approximately $25 million to $50 million or more. However, existing stage 2 aircraft can meet stage 3 requirements by replacing the engines for about $9 million to $11 million. In some cases, hushkits can be installed on existing

engines at a cost of about $1 million to $3 million per aircraft. According to the FAA, allowing hushkits when available results in a 41 percent savings, on average, versus requiring aircraft replacement.

We adjusted our estimate by assuming that any particular type and cohort of aircraft (e.g., B727s built in 1975) would be either replaced, re-engined, or hushkitted, depending on which alternative was least expensive, taking into account both the initial capital cost and the fuel and maintenance savings that replacement and (to some extent) re-engining provide. This analysis resulted in a present value cost estimate for a year 2000 phase-out of stage 2 aircraft of $2.2 billion.

AVIATION SYSTEM CAPACITY TASK FORCE

September 27, 1990

Testimony before the
House Aviation Subcommittee
of the
House Public Works & Transportation Committee
on
FEDERAL AVIATION NOISE POLICY

* * * *

I am J. Donald Reilly, Chairman of the Aviation System Capacity Task Force, and accompanying me is Charles Bautz, of Delta Airlines, who chaired our Task Force's Noise Working Group.

The Task Force, comprised of twenty-three representatives of a cross-section of the industry (list attached), was appointed by FAA Administrator Busey one year ago. Our charge was to investigate major causes of aviation congestion, and to make recommendations to the Administrator for his consideration in redressing system constraints.

In pursuing our efforts, the Task Force formed four Working Groups. Each of the Working Groups was ably assisted by many individuals with particular expertise or experience in the areas under their consideration. The four Working Groups dealt with:

- Technology
- Government Roles
- Financing
- Noise

Our most recent Task Force meeting was held on August 22, 1990, and we presented our report to FAA Administrator Busey on September 25, 1990. I am pleased to submit a copy of that report for the record, and briefly review our recommendations dealing with aircraft noise.

NEED FOR LEGISLATIVE SOLUTION

I applaud you, Mr. Chairman, and the Subcommittee for undertaking these hearings on a subject traditionally immeshed in a sea of parochial land mines. . .where discussion has been manifest, compromise by opponents meager, and solutions -- to date -- perhaps more harmful than meaningful on a national basis.

It is the view of the Task Force that no one segment of the industry can resolve the noise problem alone. We need a comprehensive national solution to what is a truly a national problem. We need a coordinated solution weighing the needs of the various parties involved. We need a legislative solution that will effect all portions of the solution at the same time in order to insure equity and balance.

TASK FORCE NOISE RECOMMENDATIONS

The Task Force believes that crafting a meaningful and balanced solution to the noise problem will require: (1) responsible local noise restrictions, (2) a phase-out of Stage 2 low-bypass aircraft, (3) an ameliorating Stage 2 aircraft non-addition rule, (4) airline compliance reporting, and (5) action to insure appropriate land use programs around airports.

The objective of the recommendations is to reduce civil aviation fleet noise levels within a reasonably short period with definite cut-off dates for the Stage 2 low-bypass fleet, provide a balanced review of local aircraft noise operating procedures so as not to unreasonably constrain capacity, and insure responsible land use controls around airports in order to abate further capacity restrictions and permit needed capacity growth in the public interest.

Our Task Force recommendations were submitted to the FAA Administrator earlier this week (1) with unanimous Task Force agreement as to the principles involved in addressing solutions to the noise problem, (2) with Task Force consensus as the specific noise solution details, but (3) with two differing approaches for dealing with future local airport noise restrictions on Stage 2 aircraft operations -- the first one emanating from our last full Task Force meeting, and the second approach (Attachment 1 to the Noise Report) presented by the airline members of the Task Force.

In summary, the Task Force recommendations are:

A. Reducing Fleet Noise Levels

1. Stage 2 low-bypass aircraft would be allowed to operate until December 31, 2003, provided the carrier can show, by the end of 1998, a contractual agreement with a manufacturer for either a replacement Stage 3 aircraft or a hush kit/re-engine modification to bring the affected tail number into Stage 3 compliance; otherwise, the aircraft must be removed from service by December 31, 1999.

2. Any Stage 2 low-bypass aircraft, on U.S. Registration in domestic service, that charges ownership or operation after December 31, 1998, must be modified to a Stage 3 certification status within six months, unless the aircraft is transferred subject to a valid modification contract.

3. Stage 2 low-bypass aircraft imported from non-U.S. registry sources, and placed in either domestic or international U.S. service:

   - prior to December 31, 1994, must be modified to Stage 3 by December 31, 1996;

- between January 1, 1995, and December 31, 1997, must be modified to Stage 3 by December 31, 1997; and
- after January 1, 1998, must be modified to Stage 3 prior to being placed into service.

B. LOCAL NOISE RESTRICTIONS

1. Not withstanding the above specified requirement dates, an airport operator -- as a local option -- may ban operation of all Stage 2 low-bypass aircraft at its airport after December 31, 1999.

2. Local airports would retain the right to establish local noise restrictions on all aircraft, but with a Federal review approval process of restrictions applying to Stage 3 aircraft. It is agreed that Federal review process standards for evaluating and approving Stage 3 noise restrictions must be developed, and include such considerations as justification of the noise restrictions, effect on system efficiency and cost, effect on flight safety, alternative options, and forum for public comment. Further, if the Federal Government disapproves a proposed Stage 3 restriction the airport may not impose it and the Federal Government would assume liability for damages resulting from the airports inability to impose that particular restriction.

I wish to note here that the airline-supported proposal (that I mentioned previously) differs from the above in that they feel the "Federal review process" should also apply to all new Stage 2 noise restrictions, as well as Stage 3, but they agree the Federal Government should not have authority to prevent local enactment of Stage 2 restrictions even after Federal review.

C. AIRPORT LAND-USE PROGRAMS

1. A locally controlled, compatible land-use program based on the 65 Ldn noise contour shall be established at airports. The program goal should be to protect the Stage 3 noise area to the fullest extent possible through such actions as compatible zoning, noise easements, land acquisition soundproofing, and other appropriate means. We feel Congress must develop appropriate incentives to encourage local participation in order to carry out land use programs.

D. COMPLIANCE

1. All airlines should file an initial report with the FAA by December 31, 1991, showing how they will meet compliance dates, and such annual reports would be discontinued after a carrier achieves 100% Stage 3 operation.

2. No exceptions will be allowed to compliance date requirements for the Stage 2 low-bypass phase-out and non-addition rules.

• • •

AVIATION SYSTEM CAPACITY TASK FORCE

September 25, 1990

The Honorable James B. Busey IV
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dear Admiral Busey:

It is my great pleasure to submit to you four reports recently approved by the Aviation System Capacity Task Force.

These reports represent the culmination of our intensive Working Group discussions, analysis, and formulation of proposed action plans; followed by review and approval for submission to you by the full Task Force.

The reports herein submitted include those of the:

1. Noise Working Group (Principles of Proposed Aircraft Noise Control Legislation);
2. Technology Working Group (Airport/Airway System Capacity Technology and Procedure Development Needs);
3. Finance Working Group (Findings and Recommendations); and
4. Airport Development Working Group (Report on Airport Development and Government Roles).

The latter three reports are submitted to you with unanimous agreement of the Task Force. The first report, dealing with aircraft noise, is submitted to you with unanimous Task Force agreement as to the principles involved in addressing solutions to the noise problem, and with a Task Force consensus as to the specific noise solution detail recommendations, but with two differing approaches for dealing with future local noise restrictions on Stage 2 aircraft operations – the first emanating from the last full Task Force meeting, and the second (Attachment 1 to the Noise Report) presented by the airline members of the Task Force.

These four reports are descriptive of the extensive analysis which went into their development,and prescriptive as to actions for both government and industry to address the aviation capacity problem.

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The Task Force considers growing capacity constraints the Achilles' heel of aviation; requiring innovative approaches to airspace and airport facility development and operating procedure enhancements. With this series of reports, we have laid out a broad program of recommended actions and ongoing efforts required to increase aviation capacity to meet the needs of the traveling and shipping public. We hope you will find these recommendations useful in formulating government action programs and in providing industry leadership:

- In addressing the issue of aircraft noise, we conclude that a comprehensive program, including new legislative assistance, is needed to assure responsible local noise restrictions, a phase-out of Stage 2 low-bypass aircraft, an ameliorating Stage 2 aircraft non-addition rule, and action to insure appropriate land use programs around airports.

- In the technology area, the Task Force urges a series of government policy directions, and twenty-three specific projects to enhance capacity both over the near- and longer-terms. Some of these project-demonstrations previously encouraged by the Task Force have already been initiated by FAA, and we applaud you for these undertakings.

- Regarding system capacity financing needs, we have presented a series of findings and recommendations which we feel will be helpful in future planning to both the administration and Congress.

- With respect to airport development and government roles, the Task Force has made seventeen broad recommendations covering optimization of the present system of airports, use of surplus military airports, airport land banking needs and land use control, new aircraft types and actions to enhance airport capacity, and the need for a realistic, multi-year national airport master plan.

The members of the Task Force appreciate your great concern regarding the capacity constraints now faced by the industry and the implications of not attacking this problem at the earliest possible time. As we note, a broad remedial program is needed now. Your leadership is imperative, and the industry stands ready to support you.

We thank you for your great support of the Aviation System Capacity Task Force and its activities.

Sincerely yours,

Don Reilly

J. Donald Reilly
Chairman

Enc.:
1. List of Aviation System Capacity Task Force members and Working Group Chairmen.
2. Four Task Force reports.

August 22, 1990

AVIATION SYSTEM CAPACITY TASK FORCE

Recommendations

Principles of Proposed Aircraft Noise Control Legislation

The following principles are applicable to both domestic and foreign certificate holders operating aircraft weighing 75,000 pounds or greater.

Airport Local Noise Restrictions

On the local level, airports may ban operation of Stage 2 low-bypass aircraft after December 31, 1999. At each airport where a ban is enacted under this provision, the locally established deadline will supersede the fleet phaseout provisions.

Airports will retain the ability to establish local noise restrictions on aircraft, subject to Federal review of restrictions on Stage 3 aircraft.

A Federal program shall be established to review all new local actions to establish noise restrictions on Stage 3 aircraft. Federal Review Process standards for evaluating and approving such local noise restrictions must be developed. The standards should include as a minimum the following:

- Justification of the noise restriction(s)
- Effect on system efficiency and cost
- Effect on Flight Safety
- Alternative options
- Forum for public comment.

This Review Process shall be completed in a timely manner.

The Secretary shall, within 90 days of enactment of this provision, determine if any local noise restrictions on Stage 3 aircraft, which are adopted between the date of submission of this report to the administration and the date of enactment, are to be subject to the Federal Review Process. The Secretary's determination shall be based upon a finding of undue impact of restrictions on interstate commerce.

If the Federal government disapproves a proposed Stage 3 restriction, the airport may not impose it. And, in such case, the Federal government will assume liability for any damages resulting from the airport's inability to impose that particular restriction.

As Stage 3 operations increase at an airport, local noise restrictions must be re-evaluated for appropriateness at a reasonable time interval.

Stage 2 Low Bypass Ratio Fleet Phaseout

Stage 2 Low bypass aircraft will be allowed to operate until December 31, 2003 provided the carrier can show that by December 31, 1998, a contractual agreement has been entered into with a manufacturer for either a replacement Stage 3 aircraft or a hush-kit/re-engine modification that will bring the affected tail number into Stage 3 compliance.

If a carrier elects not to enter into a contractual agreement to bring its Stage 2 low-bypass aircraft into Stage 3 compliance, then the affected Stage 2 tail number will be removed from service by December 31, 1999.

If a contractual agreement to bring Stage 2 low-bypass aircraft into Stage 3 compliance is canceled after December 31, 1999, that tail number will be immediately removed from service.

Any Stage 2 low-bypass aircraft, on U.S. Registration in domestic service, that changes ownership or operator after December 31, 1998 will have to be modified to a Stage 3 certification status within six months of such action, unless the aircraft is transferred subject to a valid modification contract.

Non-Addition Rule

Stage 2 low bypass ratio aircraft imported from non-U.S. registry sources and placed in either domestic or international U.S. service prior to December 31, 1994 will be modified to Stage 3 certification status by December 31, 1996.

Stage 2 low-bypass aircraft imported from non-U.S. registry sources and placed in either domestic or international U.S. service between January 1, 1995 and December 31, 1997 will be modified to Stage 3 certification status by December 31, 1997.

Stage 2 low-bypass aircraft imported from non-U.S. registry sources on or after January 1, 1998 must be modified to Stage 3 certification status prior to being placed in U.S. domestic or international service.

From the date this rule is enacted, any Stage 2 low-bypass aircraft type for which a Stage 3 modification program does not exist will not be allowed to be imported from non-U.S. sources and placed in U.S. domestic or international service.

Reporting Requirements

All domestic and foreign certificate holders will file a report with the FAA by December 31, 1991, showing how compliance with the above is to be achieved. Reports will be filed on December 31, of each following year to show both compliance progress and plan revisions toward achieving compliance.

When a carrier reaches and maintains a 100% Stage 3 operation, reports will not be necessary.

No exceptions will be allowed to the compliance date requirements of the Stage 2 low-bypass Phaseout and Non-addition Rules.

FAA will have 90 days to review a carriers report and issue any findings.

Airport Land Use Area

A locally controlled, compatible land-use program shall be established at airports.

Airports shall determine the availability and/or feasibility of creating an airport land use commission or some other means of establishing an effective land use program.

Airports shall define the "Airport Land Use Area" (ALUA) based on the 65 Ldn noise contour. An assessment shall be made of the total effect of operating all Stage 3 aircraft, along with known airport development plans and other appropriate influences. The program goal should be to protect the Stage 3 ALUA to the extent possible under the established plan through actions such as:

- Compatible zoning
- Noise Easements
- Land Acquisition
- Soundproofing
- Other actions

Appropriate incentives shall be provided to encourage local participation and carry out the land use program.

ATTACHMENT 1

AVIATION SYSTEM CAPACITY TASK FORCE
NOISE WORKING GROUP

September 4, 1990

Airport Local Noise Restrictions

On the local level, airports may ban operation of Stage 2 low bypass ratio aircraft after December 31, 1999. At each airport where a ban is enacted under this provision, the locally established deadline will supercede the Fleet Phaseout provisions.

Airports will retain the ability to establish local noise restrictions on aircraft subject to the following:

A Federal program shall be established to review all new local action to establish noise restrictions on aircraft. Federal Review Process standards for evaluating and approving such local noise restrictions must be developed. The standards should include as a minimum the following:

- Justification of the noise restriction(s)
- Effect on system efficiency and cost
- Effect on flight safety
- Alternative options
- Forum for public comment.

This Review Process shall be completed in a timely manner.

The Secretary shall, within 90 days of enactment of this provision, determine if any local noise restrictions, which are adopted between the date of submission of this report to the administration and the date of enactment, are to be subject to the Federal Review Process.

Following review, an airport may implement any Stage 2 Noise restrictions which are in compliance with existing legal standards. An airport may implement any Stage 3 restrictions that are not disapproved by the Federal government.

If the Federal government disapproves a proposed Stage 3 restriction, the airport may not impose it. And, in such case, the Federal government will assume liability for any damages resulting from the airport's inability to impose that particular restriction.

Noise restrictions enacted prior to the effective date of the Federal Review Program as established by the Secretary which are in compliance with existing legal standards may remain in effect.

As Stage 3 operations increase at an airport, local noise restrictions must be re-evaluated for appropriateness at a reasonable time interval.

AVIATION SYSTEM CAPACITY TASK FORCE

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BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON AVIATION

Statement of Florida West Airlines On Federal Aviation Noise Policy

Communications with respect to this statement should be addressed to:

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FLORIDA WEST AIRLINES, INC.

September 27, 1990

BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON AVIATION

Statement of Florida West Airlines On Federal Aviation Noise Policy

Florida West Airlines appreciates the opportunity to present its views on a Federal Aviation National Noise Policy to the Subcommittee.

Florida West favors a national, uniform noise policy applicable to the civil aircraft of all users of this nation's airspace and airports -- both U.S. carriers and non-U.S. carriers. Such a uniform policy is fair to airport neighbors and is fair to each carrier which spends the funds to hushkit or re-engine its aircraft.

I. A DESCRIPTION OF FLORIDA WEST AIRLINES

Florida West Airlines is a small all-cargo airline headquartered at Miami International Airport in Florida. It operates primarily planeload operations for large shippers or freight forwarders or substitute services to U.S. or foreign carriers who have short term shortages of capacity. It fills a niche not served by the major integrated express carriers or by the type of retail freight operation formerly performed by Flying Tigers. While Florida West's business may be different from that of the other all-

cargo carriers appearing here today, its concerns and desires for a national noise policy are the same.

Florida West Airlines has been in business since the early 1980's. At this time, Florida West has 11 B-707-300 series freighter aircraft: 6 are in use by the company now; 3 are dry-leased out to other carriers; and 2 are on option. To support its operations, Florida West has 42 flight crew employees, 264 maintenance employees (including an FAA approved repair station facility); and 32 clerical, management, administrative, and other employees. For the first 8 months of 1990, gross revenues were approximately $22,443,000. In the 8 months ended August 31, 1989, gross revenues were $14,577,000. This significant increase reflects the dynamism and growth of the air freight industry and the need to adapt any national noise policy to assure that all segments of the U.S. all-cargo industry are permitted to increase supply to satisfy demand.

II. FLORIDA WEST URGES THE ADOPTION OF A NATIONAL NOISE POLICY TO MAINTAIN A STRONG U.S. CARRIER FREIGHT INDUSTRY.

Florida West Airlines is committed to staying in business and retrofitting its B-707 aircraft with stage 3 hushkits when that technology becomes feasible and certified. But before Florida West is willing to spend the $1-$2 million per aircraft required to achieve stage 3 levels, it wants the playing field to be level and its access to the nation's airports guaranteed. This means there must be a national noise policy that applies at all U.S. airports and to all civilian users including foreign airlines. Further, the

policy must be uniform so that FAA certified stage 3 aircraft are assured of 24 hour a day access to this nation's airports. And, in the interim, the current patchwork of individual airport stage 2 restrictions should be overridden.

A major benefit of a uniform policy applicable to all carriers and airports is the benefit to the environment. While some airport neighbors will never be happy until the airport is turned into a shopping mall, an all stage 3 fleet (U.S. and foreign) will benefit the environment. It will produce an overall reduction of the number of persons living within the Ldn 65 contours. Because much cargo moves at night, the amelioration of aircraft noise at night benefits the airport environs. All carriers (U.S. and foreign) must continue to be good citizens and take reasonable, albeit costly, steps to reduce aircraft noise.

No airport should be permitted to exempt itself from the national policy in order to gain a competitive advantage over other airports by allowing stage 2 operations after stage 3 becomes mandatory. Some airports are so eager for the benefits of increased utilization, traffic, and the other economic benefits from an airport that local authorities may be willing to accept stage 2 aircraft for a period longer than a national noise policy would otherwise permit. That must not be allowed for both environmental and competitive reasons.

Furthermore, in the interim, a national noise policy is required to permit the continued operation of stage 2 aircraft without undue restriction and to allow small carriers, which must

rely on used equipment, to continue to add stage 2 aircraft. A non-addition rule would impede the growth of this nation's freight carriers as more and more freight goes by air. A non-addition rule imposed on U.S. carriers but not imposed on our Western Hemisphere competitors would be an unmitigated disaster.

III. THE NATIONAL NOISE POLICY MUST APPLY UNIFORMLY TO FOREIGN AND U.S. AIR CARRIERS.

Florida West's main market today is in the Latin America/Caribbean area where Florida West competes on a non-level playing field now. Today, dozens of all-cargo aircraft are operated by foreign air carriers owned and controlled by citizens of their home country. But several are operated by carriers holding foreign carrier authority from the U.S. Department of Transportation even though the carriers are owned and controlled by U.S. citizens. Further, the Department of Transportation allows virtually unlimited fifth freedom charters by foreign carriers. It does so even though there is often a lack of fifth freedom market opportunities for U.S. carriers (and sometimes outright denial of such applications) from many of these countries. Thus there is often inadequate reciprocity or opportunity for U.S. carriers to operate fifth freedom flights to/from most foreign countries. Yet, those carriers have almost carte blanche from our government.

There are great economic advantages to being a Section 402/FAR Part 129 carrier. From the economic side, these are minimal restrictions on fifth freedom operations. Under current DOT policy, foreign carriers from almost every country have access to any U.S.

point to/from any foreign point opportunities by filing for and obtaining a fifth freedom charter authorization for one or a hundred flights. DOT rarely denies such an application when a small U.S. carrier objects.

The cost of compliance with FAR Part 121 is substantially higher than the lesser ICAO requirements adhered to by many Latin American countries' safety and operating regulations. There are enormous differences in maintenance requirements with U.S. minimum maintenance requirements being substantially higher (and thereby more expensive to comply with) than many foreign countries.

Flight and duty time regulations in FAR Part 121 are far more protective in preventing flight crew fatigue than whatever flight and duty time regulations may apply in some foreign countries. To give the Subcommittee an example, Florida West recently bid on an around-the-world flight that would have required about 60 flight hours. To comply with U.S. FAA flight and duty time requirements, Florida West would have had to pre-position separate three person flight crews in 4 cities along the route so that the maximum flight and duty times would not be exceeded. Florida West did not win the contract. A foreign carrier did because it did not have the added required crew and crew positioning costs that Florida West had. The foreign carrier staffed its aircraft with two captains, one co-pilot, and a flight engineer. The only stops made were stops for re-fueling and cargo loading and off-loading. There were no layovers for crew rest. By the time this aircraft arrived in the United States, its flight crews had been on duty for over 24 clock

hours and certainly had amassed many more than the 10 maximum flight hours in 24 hours allowed under Part 121.

While it may be beyond the scope of this Subcommittee's inquiry as to whether the lesser ICAO standards adhered to by many Western Hemisphere airlines are sufficient to protect U.S. citizens living around airports, the point is: for the U.S. carrier freight industry to survive and continue (and not go the way of the formerly strong U.S. maritime industry), any national noise policy must be equally applicable to U.S. and to foreign carriers.

We have made these extended remarks so that the Subcommittee and the Congress will not consider a more relaxed treatment for foreign carriers and governments which cry poverty and seek exemptions from Stage 3 compliance dates. While the Concorde operated by British Airways and Air France is a technological marvel, it is a source of horrendous noise. The policy or foreign relations considerations that permitted the continued operation of this stage 1 aircraft (FAR §§91.819 and 91.821) must not be extended to foreign carriers in a national noise policy geared to achieving 100% stage 3 compliance by some date in the future. Other than the Concorde, national noise policy should not countenance any special relief for foreign carriers.

As Florida West indicated before, the U.S.-Latin America/Caribbean all-cargo market is extremely price competitive. Shippers will select one carrier over another (without regard to the quality of the aircraft, maintenance, and flight crews) for as little as $20 a block hour differential. Hushkits will cost $1-$2

million per aircraft. To achieve re-capture of this capital expenditure, that translates roughly into an additional cost of $200 to $500 per block hour (depending on annual utilization and number of years used to amortize the investment).

All carriers operating comparable equipment should be required to invest in stage 3 retrofits. Carriers like Florida West are already at a pricing disadvantage vis-a-vis foreign carriers. The significant differences between FAR Part 121 and foreign countries' requirements for their carriers impose on Florida West higher costs than our foreign carrier counterparts; U.S. carriers must comply with the more rigorous Part 121 requirements on flight and duty time regulations, crew training and recurrency, and maintenance requirements, for example. While we are not suggesting that the FAA reduce its safety standards, we cite this current disparity to persuade the Congress to treat U.S. and foreign airlines identically in any legislation or legislative history to be interpreted by the FAA. If foreign carriers are allowed to continue to operate stage 2 four-engine jets in all-cargo service while U.S. carriers are required to operate stage 3 four-engine jets, then the foreign carriers will gather almost all the traffic, and U.S. carriers will do their best to engage in some form of offshore operation to avoid stage 3.

IV. A NATIONAL NOISE POLICY SHOULD SET DEADLINES THAT REFLECT TECHNOLOGICAL ACHIEVEMENTS AND CARRIERS' ABILITIES TO PAY FOR RETROFITS.

Florida West believes that the lessons of the mid-1980's with

respect to the government's determination to upgrade from stage 1 to stage 2 have been learned. That push created chaos but it eventually achieved its goal. While we want to avoid chaos, there should be attainable deadlines set.

There are serious efforts now by several companies to develop stage 3 hushkits for the B-707-300. Based on Florida West's discussions with several of these vendors, Florida West is confident that there will be such a hushkit certified within the next 24 to 36 months. The adoption of a national noise policy will accelerate and focus the development of such hushkits. Florida West anticipates that the B-707 hushkits to be certificated will not impose unacceptable payload or operational penalties.

If there were a national noise policy requiring all carriers to achieve 100% stage 3 operations by a certain date and the requirement that airports must accept stage 3 aircraft at all times, [1] then Florida West would be willing to commit to a program of conversion of its aircraft that is within its economic capabilities. Assuming adequate quantities of hushkits and their related parts, Florida West would envision retrofitting its aircraft at the rate of one every 9 months after the hushkit Florida West purchases is FAA approved and has several months of field experience.

Florida West is not pressing for any particular date for a ban on the operation of stage 2 aircraft. The date should allow the development and field testing of hushkits and enough time to

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[1] Carriers should be free to expand their fleets with Stage 2 aircraft and some relief from the patchwork of local airport ordinances must be granted.

manufacture sufficient shipsets to retrofit all carriers in a commercially reasonable way. Financial hardship by a financially weak carrier should not be a basis for an exemption to any airline -- U.S. or foreign. Protecting the environment by retrofitting to stage 3 must be a mandatory price of admission to the airline industry serving the United States.

policy.fwa

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NATIONAL AIRPORT WATCH GROUP

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FOR THE SUBCOMMITTEE ON AVIATION HEARING - SEPTEMBER 27, 1990

Congressman Oberstar; members of the Committee, ladies and gentlemen:

I am Loren Simer from Minneapolis, and I am here to discuss recently proposed legislation giving the FAA exclusive power over aircraft noise control. I am speaking today on behalf of Minneapolis' South Metro Airport Action Council, as well as the National Airport Watch Group, which is a national coalition of local anti-noise organizations. The National Airport Watch Group coordinates the efforts of grass roots citizen's organizations in 21 states. Organizations concerned with noise at such critical airports as Chicago-O'Hare, St. Louis, Dallas-Fort Worth, Boston, Washington, D.C., Milwaukee, Detroit, Nashville, Oakland, Seattle, Neward and Phoenix are members of this National Watch Group.

All of these groups, plus the National League of Cities, share my concern over the recommendations of the FAA's "Aviation System Capacity Task Force". No doubt your committee has copies of their report dated August 22, 1990, which the FAA is using to shape its proposals for Congress.

Few would disagree with the phaseout of Stage II aircraft by the year 2000, but the proposals to remove local power to regulate the use of Stage III aircraft is completely and utterly rejected by the organizations I represent and should be rejected in total by this committee.

If we are to have an all Stage III fleet in the 21st century and the FAA (through something called a Federal Review Process) is given veto power over legal local noise restrictions, what authority remains in the hands of the airport proprietor? Are parking fees and gate rentals to become their major concerns?

The principal of a single federal agency imposing standards of noise regulation is wrongheaded and unsound; a child can recognize that specific cities have specific, unique problems that local authorities, in response to local needs, are best able to understand and address.

The picture of a universal noise regulation serving such geographically distinct communities as Boston, Chicago and Tacoma is patently absurd. It is precisely local regulations and addressing local needs that are best suited for this issue, not revocation of the power to impose community standards for

a community problem. Airport noise affects local communities: local communities have a stake in commercial aviation, local authorities are best poised to strike the necessary compromises involved in the aircraft noise issue.

Local ordinances, worked out through difficult negotiation and compromise at the community level, and custom fitted to the specific community's needs, would all be abrogated and annulled if the Recommendations of the Task Force are accepted.

The FAA would be the sole authority for airport noise restrictions. This would be turning the clock back to zero in terms of workable solutions to aircraft noise. For example, many airports today, due to pressure from community groups, have imposed flight curfews or restrictions on night flights to reduce the impact of late night noise disturbances. Even the FAA considers night flights ten times as irritating as day flights. The recommendations of the Task Force include annulling these noise curfews, ostensibly until a federal standard can be set. But, is it realistic to suppose that the number of night flights tolerable in Chicago are acceptable at Washington National? Why should local ordinances, produced by local authorities expressing local tolerance levels be overturned? This is absurd, counter-productive and retrogressive. For these reasons, this

recommendation has the support of the industry-dominated "Task Force" and for the same reasons, our many organizations reject it.

The same point can be made against the proposal of the Task Force to give the FAA veto power over local communities' noise ordinances. Only the airlines support this proposal. It is self-evident why this is so: which voice is heard loudest on the federal level? A national airline corporation or the afflicted residents of, say, Orange County, California, or Louisville, Kentucky? What would be the FAA's most likely focus of concern? Northwest Airlines or the Highland Park neighborhood of St. Paul?

One other point needs to be mentioned. If the proposals are acted upon, and the FAA becomes the sole regulating authority for noise at airports, the federal government will be exposed to costly lawsuits seeking to address the many aircraft noise pollution cases across the nation. This kind of legal exposure should seem like doubtful policy to a thoughtful Congress.

The proposals of the Task Force to enhance the FAA's power at the expense of local authorities must never be allowed to take effect.

It is extremely awkward to picture the FAA acting in support of community noise concerns against the ambitions of the nation's airlines. The FAA was created to specifically enhance the nation's airlines, and encourage more air travel. They have succeeded. Expecting it to do otherwise than side with the airlines would be idiotic; yet it is precisely this idiocy the Task Force expresses as the best solution to the noise regulation question. Having a higher opinion of the goodwill and intelligence of the committee than the Task Force apparently does, I urge you to reject anything like the task force recommendations.

Thank you very much for the chance to speak on this issue.

Good day!

STATEMENT OF AEROSPACE INDUSTRIES ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
OF THE U.S. HOUSE OF REPRESENTATIVES

REGARDING

FEDERAL AVIATION NOISE POLICY

SEPTEMBER 27, 1990

For AIA:

Dale S. Warren
Vice President, Deputy General Manager
Quality, Business and Technology
Development
Douglas Aircraft Company
McDonnell Douglas Corporation

Good morning (afternoon). My name is Dale Warren, Vice President and Deputy General Manager of Quality, Business and Technology Development with Douglas Aircraft Company, McDonnell Douglas Corporation and I am here on behalf of the Aerospace Industries Association. AIA appreciates the opportunity to provide comments with respect to your review of Federal Aviation Noise Policy. Today, I would first like to discuss our estimates of current and future U.S. fleet composition and worth, projections of future noise climate, and noise reduction technology. Second, I would like to present AIA recommendations for key elements in the expansion of the U.S. National Noise Policy and future legislation. We firmly believe that the competing needs of airport communities who want more noise reduction and transportation system owners and users dictate long range plans executed at the national level.

Manufacturers forecasts indicate that the current U.S. Stage 2 fleet has an estimated asset value of approximately 20 billion dollars and performs about 64 percent of domestic departures. The current Stage 3 fleet has an estimated asset value of approximately 60 billion dollars. Between January 1990 and December 2005, it is estimated that there will be approximately 240 billion dollars spent on new Stage 3 airplane deliveries of which 60 percent of this cost will be for growth only. AIA believes that the majority of today's airports with a "noise problem" are those where there are a substantial number of Stage 2 aircraft operations.

We agree with FAA predictions made in their August 1989 report to Congress on the "Status of the U.S. Stage 2 Commercial Aircraft Fleet" (Figure 1). These predictions indicate up to a 65-70% reduction in the number of "noise impacted" people living around U.S. airports would occur by achievement of an all Stage 3 fleet. The FAA

predictions are, in fact, very consistent with information recently developed by a specially appointed "Stringency Study Subgroup" of Working Group 1 of the ICAO Committee on Environmental Protection.

Current FAA aircraft noise standards, FAR Part 36, are based upon requirements of the "Noise Control Act of 1972" mandating considerations of economic reasonableness and technological practicability. Stage 3 airplanes now incorporate within their propulsion systems all available noise reduction technology, comply with FAR 36, and are substantially quieter than Stage 2 airplanes. The introduction of the high-bypass-ratio engine in the 1970's and development of sophisticated acoustically treated nacelles yielded a step change in the technology of engine noise control and was further aided by improvements to aerodynamics of the airframe. Unfortunately, this progress has not been duplicated or even remotely approached in newly developed propulsion systems (Figure 2) because there are no further significant step improvements available or foreseen in spite of significant research efforts spent by the industry. These efforts are on-going because of competitive pressures in the marketplace to produce aircraft that are as quiet as economically reasonable. This should not be interpreted to mean that we do not see an urgent need and would not whole heartedly support well-funded and well-coordinated research targeted to explore the feasibility of advanced technology and future noise certification goals. Such a technology base is essential for U.S. noise standards to remain economically reasonable and technologically practicable and for enforcing technology applications. Until such technology is developed, tightening of regulatory requirements cannot be justified. However, experience has shown that even if such new technology were to be realized, full fleet conversion benefits to airport communities

would not occur for a time span of 30-40 years. Therefore, interim options need to be developed to permit understanding and control local aircraft community noise climate for those airports that find it appropriate.

AIA firmly believes that a balance is needed between the desires of those who are attempting to implement and benefit economically from a rapidly growing transportation system and the needs of airport community residents who seek less exposure from aircraft noise. Already some airports have chosen to impose operational restraints which can be met only by off-loading passengers or fuel and which result in the need for increased numbers of operations to satisfy transportation system demands. Continued escalation of this process will be damaging to the overall transportation system. The issues involved are such that appropriate solutions can only be achieved at the national level. Far reaching noise cost/benefit studies reflecting total economic and environmental impacts rather than just localized impacts are necessary.

We believe that the implementation plan for the U.S. National Noise Policy and future noise legislation should include several key elements as follows:

1. A Stage 2 Aircraft Phaseout Plan

   We support the recommendations of the Aviation System Capacity Task Force Noise Working Group for Stage 2 aircraft phaseout and for a Stage 2 non-addition rule administered at the federal level. Without federal action, local airport authorities would establish independent phaseout schedules as now being proposed by some major airports. Under these conditions, it would

be very difficult for operators to establish Stage 2/Stage 3 conversion plans or get sufficient utility from their Stage 2 airplanes to be able to afford Stage 3 replacements.

2. A Ban on Stage 3 Aircraft Operating Restrictions

We believe that there should be a strong federal government role in maximizing utilization of available U.S. airport capacity and maintaining open access to airports. Since a large increase in Stage 3 airplanes will be required to satisfy this transportation system demand, it is imperative that local noise restrictions on Stage 3 operations be avoided even if the Federal Government must deal with some liability issues.

3. No Change in Stage 3 Aircraft Noise Rule Stringency

There is no noise reduction technology available that would permit tightening of Stage 3 limits as was the case when Stage 3 requirements were imposed on aircraft designs in place of Stage 2 requirements. Without research resulting in new technology, there can be no improvements in community noise exposure without operational restrictions and/or operational penalties. Airplane performance deterioration results in increased fuel burn, pollution and higher costs to the traveling public with little or no benefits to communities.

4. Enlargement of Compatible Land Use Programs

AIA recommends that the Federal Government establish incentives to promote more extensive compatible land use programs at both newly emerging and highly

developed U.S. airports. We support the Aviation System Capacity Task Force recommendation for a program goal to protect Stage 3 "Airport Land Use Areas".

In summary, we believe that:

1. Since the Stage 2 aircraft currently dominate the number of departures and noise climate at most U.S. airports, there will be a major improvement in noise climate when an all Stage 3 fleet is achieved.

2. Within the next 15 years, large numbers of Stage 3 airplanes will be added to the fleet and Stage 2 airplanes will either be retired or converted to Stage 3. Airline investments in Stage 3 aircraft will be large.

3. No new noise reduction technology is available or foreseen at this time. New and intensive government sponsored noise research is needed.

4. An expansion of the U.S. National Noise Policy and appropriate legislation is needed to achieve a balanced treatment for an economical transportation system and for community noise environments. Key elements are Stage 2 phaseout, ban on Stage 3 noise use restrictions, no increase in Stage 3 rule stringency, and enlargement of land use compatibility programs.

FIGURE 1. - Benefits of a Stage 2 Aircraft Operations Ban
Change in Airport Noise Exposure
within DNL 65 dB Contours

(FAA Report to Congress, August 1989)

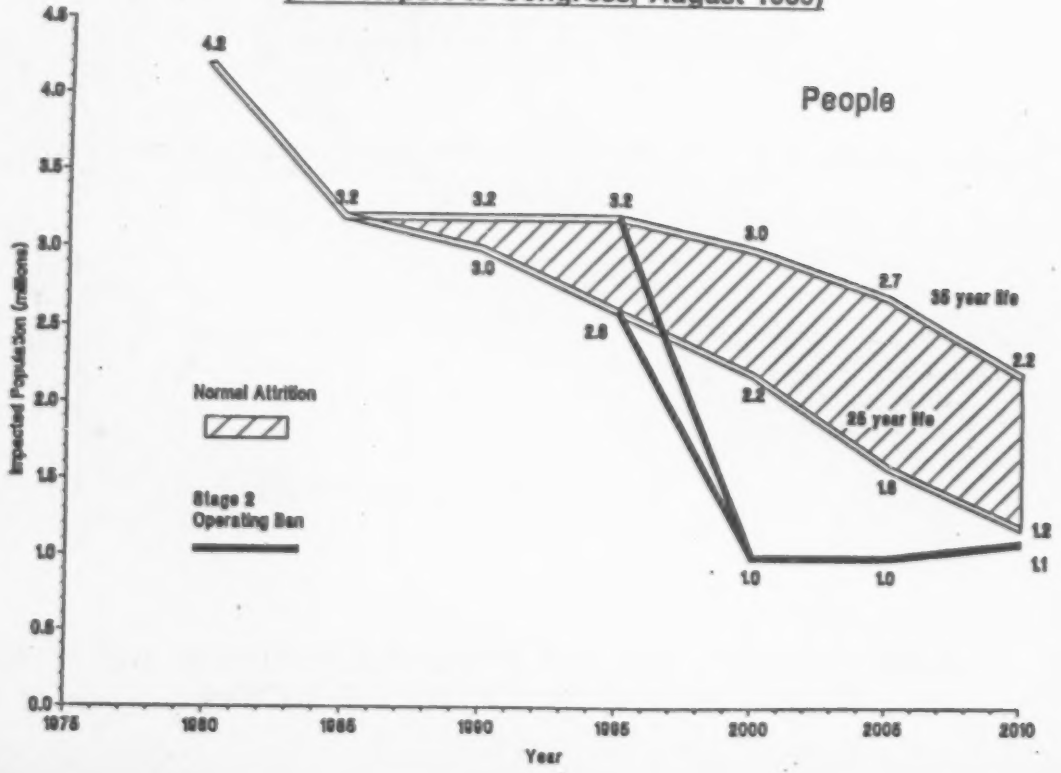
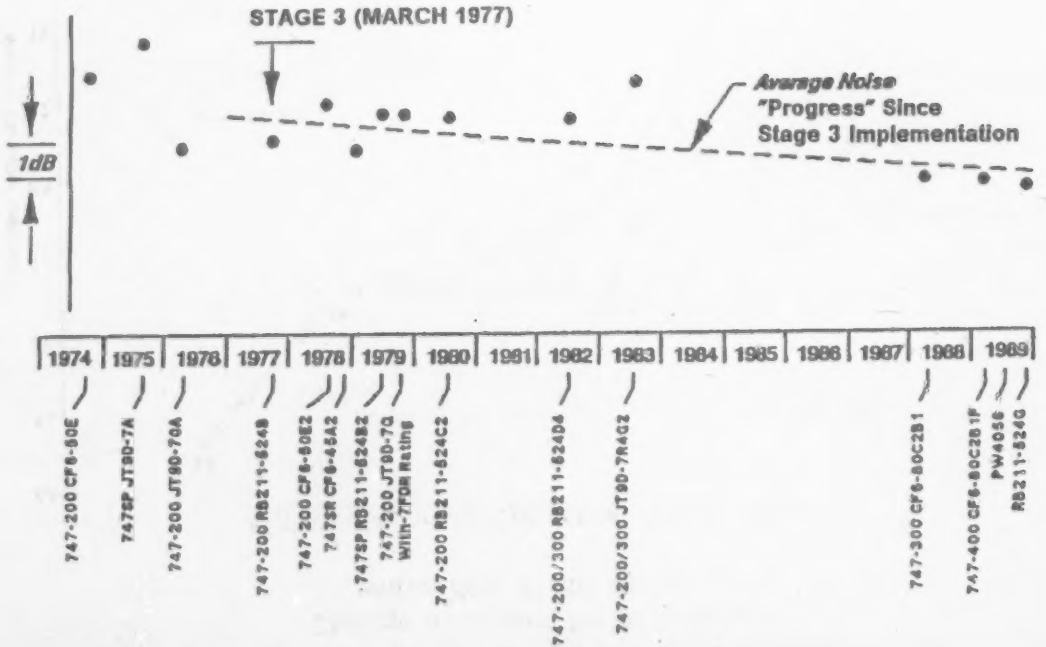


FIGURE 2. - NOISE CONTROL PROGRESS
747 SIDELINE NOISE LEVELS AT EQUAL TAKEOFF THRUST



Testimony of
ALBERT D. WISEMAN
President
ABX AIR, INC.
before the
AVIATION SUBCOMMITTEE
of the
HOUSE COMMITTEE ON PUBLIC WORKS AND
TRANSPORTATION
September 27, 1990

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Testimony of
ALBERT D. WISEMAN
President
ABX AIR, INC.
before the
AVIATION SUBCOMMITTEE
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September 27, 1990

On behalf of the 11,000 employees of Airborne Express, I wish to thank the Subcommittee for the opportunity to present the views of Airborne Express on the subject of aviation noise. As the fastest growing air express carrier in the nation, and one of the nation's largest providers of expedited cargo service, Airborne is and has been vitally interested in the issue of aircraft noise, and the local regulation of air carrier operations based on noise considerations. I applaud the leadership shown by Chairman Oberstar and the Subcommittee in conducting these important hearings. As a preliminary matter, let me describe the operations and functions of ABX Air, Inc. and its roll in the air express industry.

ABX AIR, INC.

ABX Air, Inc. is the wholly owned airline subsidiary of the Airborne Freight Corporation. Collectively ABX Air and Airborne Freight trade under the name Airborne Express. Currently, the airline operates a fleet of 17 DC-8 and 28 DC-9 jet aircraft. Airborne also conducts operations with 12 turbo-prop YS-11 aircraft. At the present time, Airborne has in maintenance and overhaul 2 DC-8-63s and 2 DC-9 aircraft in preparation for line

service. By the beginning of the year 1995, Airborne expects to be operating a fleet of 131 aircraft consisting of 82 DC-9's, 37 DC-8s and 12 YS-11s. All of the jet aircraft in Airborne's jet fleet are now classified by the FAA as Stage 2. However, this Stage 2 classification is temporary as I will explain below.

For the twelve months ending June 1990, Airborne revenues exceeded $ 1 billion. For the same period, Airborne transported over 75,300,000 shipments representing 540 million pounds of cargo. The majority of this traffic was generated in the domestic market and was transported on Airborne's dedicated fleet of all-cargo aircraft, although Airborne routinely charters 60 commuter-sized aircraft to transport freight to the literally thousands of smaller communities it serves throughout the United States.

Of the private express carriers in the U.S., Airborne ranks second in the critical before noon, overnight delivery market. Airborne primarily markets its services to corporate America which has responded enthusiastically to our services. For the past six years Airborne was the fastest growing carrier in the air express industry based on percentage growth in shipment volume. Airborne's 1990 average shipment growth continues to exceed 31% even as the nation's economy has softened.

Airborne's growth has been fueled in part by its ability to offer our corporate customers rates which reflect the benefits of volume shipping levels. In addition, Airborne has consistently maintained a low cost structure thereby allowing it to

pass on the savings to our customers. Airborne estimates that in 1989 its customers saved over $ 185 million in air cargo transportation costs by using Airborne's services as compared to those offered by our competitors. Lower transportation costs benefit not just our direct customers, but the nation's economy as a whole as the cost of goods and services produced by our customers is lower thereby enhancing the domestic and international competitive position of the United States.

Until the end of 1989, Airborne did not impose a rate increase on its customers for a period of over 9 years. During this period of rapid growth, Airborne was able to achieve productivity gains that outstripped the increased cost of doing business and thereby permitted it to hold the line on price increases. Having done so, our customers actually enjoyed rate decreases in the 1980's, in the range of 5% per year, after consideration for the affects of inflation.

I am sure the Subcommittee recognizes the many price and service benefits that resulted from the passage in 1977 of Cargo Deregulation Act. Using 1977 as a starting point, the all-cargo air carrier industry has grown over 700% based on revenues, and 1000% based on traffic (shipments). This growth in shipments required the introduction of a large dedicated all-cargo fleet which today is estimated to exceed 500 units. Of course, employment opportunities have likewise grown, with over 150,000 employees currently working in the all-cargo carrier industry. And perhaps best of all, this growth and prosperity

has been achieved with very few, if any, of the competitive or employment-related dislocations suffered by the passenger carriers since the passage, one year after Cargo Deregulation, of the Airline Deregulation Act of 1978. A complete description of the economic benefits produced by the all-cargo industry is set out the testimony of the Air Freight Association, which Airborne expressly endorses as its own.

However, of the issues with which Airborne has had to confront as it has grown, the most difficult and contentious issue is that of local regulation of aircraft noise. Airborne Express, like others in the cargo carrier industry, are particularly sensitive to this issue since the majority of our operations are conducted at night. Our concern for this issue caused Airborne over four years ago to formulate a position in favor of the government mandated conversion of the commercial fleet to Stage 3 standards. Airborne understands the frustration felt by those who object to aircraft noise and has for many years advocated a solution that would, over time, eliminate the operation of Stage 2 aircraft. Unfortunately, other interested groups have been slow to embrace this concept or have done so in an unbalanced manner. As a result, air carriers, on the one hand, and airport operators and community groups, on the other, have gone to the barricades to wage an all-out war for supremacy of regulation of aircraft noise. Airborne views the opportunity afforded by these hearings as a way to reduce the tensions that have built

up over the years and to fashion a legislative solution that will be fair to both sides.

AIRBORNE'S PROPOSAL FOR A NATIONAL NOISE POLICY

Airborne has long advocated a simple, three-part solution to the aircraft noise question. First, the FAA should require all carriers to operate only Stage 3 aircraft by a date certain (2000-2003). Second, the federal government should preempt the field of aircraft noise control as it has preempted local regulation of interstate trucking and railroad noise. Third, through regulation and incentives, the federal government should encourage airport operators and those political subdivisions with authority over lands adjacent to airports to eliminate noncompatible land use or, if not possible, provide remedial relief from excessive aircraft noise by sound proofing and other means. This policy, once implemented, will produce a number of significant public benefits. First, by the phased elimination of the generally noisier Stage 2 aircraft, the federal government will have seen to it that only the quietest aircraft will be permitted to operate within the bounds of economical reasonableness and technological practicability. The number of people living within the LDN 65 contour will be reduced to the irreducible minimum (1.1 million individuals) in the absence of an ill-advised ban on air operations. Second, by eliminating local control of aircraft operations based on noise considerations, airport proprietors will have no incentive or reason to

regulate operations of air carriers thereby eliminating the tension between the airport operators and the air carriers. Further, the transfer of authority to the federal government for the control of aircraft noise will not result in the wholesale transfer of potential liability associated with takings of property or noise damage suits. Finally, a strong federal program to eliminate noncompatible land uses will reduce even further the number of people living in noise impacted areas once the noise contour has been reduced by the removal of Stage 2 aircraft from the active fleet.

There is another significant public benefit that will flow from the adoption of a national noise policy. This Subcommittee, its Senate counterpart, the passenger and cargo carrier industry, airport operators, and the DOT and FAA have all been justifiably concerned about the lack of capacity in the existing airway and airport system. The need to expand the air transportation infrastructure is well documented. It is counterproductive, therefore, to legislate and regulate increased airport and airway access and, at the same time, permit uncoordinated local actions that reduce vital air carrier access. Given the great cost to the taxpayer and traveling and shipping public of improving air carrier access, the Congress must not let the parochial interests of airport operators reduce capacity levels by the imposition of arbitrary noise rules. Specifically, airport operators, which so strongly support legislation passed by the House of Representatives authorizing the imposition of

airport facility charges in the name of increased access, cannot now be heard to argue for continued local control of aircraft noise which reduces airport access. These two positions are in fundamental conflict and cannot stand. Therefore, to preserve the benefits of our collective efforts to increase airway and airport capacity, a limitation on airport proprietor rights is required.

Over the years this Subcommittee has shepherded our aviation laws through the thicket of conflicting positions in the best interest of the traveling and shipping public. Although the aircraft noise issue is a contentious one, the Subcommittee should not shrink from its responsibility to look for an appropriate solution. The interstate character of air carrier operations, the historic policy favoring uniform, nationwide regulation of all interstate transportation modes, and the obvious benefits of a national noise policy, all favor the adoption of Airborne's noise program. Moreover, a well formulated national noise policy which recognizes the expense of Stage 3 conversion and the time required to complete the task will be procompetitive to the extent it will allow all air carriers the time needed to finance and acquire the noise mitigation hardware required to meet the Stage 3 goal. On the other hand, a national noise policy which can be met only by the most financially secure carriers, or no policy at all, will reduce the level of competition in an industry which has already contracted to a level many believe dangerous and threatening to the continued existence of

low priced air transportation. Certainly Airborne's documented ability to offer lower cargo rates would be directly threatened were it to have to commit to a noise reduction program that exceeds its capability to finance.

Further, Airborne's ability to grow with Stage 2 aircraft is threatened by the ill-advised proposal to ban the importation of Stage 2 aircraft in the name of noise mitigation. Such a ban will artificially increase the cost of Stage 3 equipment and will discourage the use of proven hushkit or reengining technology to convert existing Stage 2 aircraft, which have many years of remaining useful life. A national noise policy is, therefore, required to ensure the future health of the air cargo industry.

THE NEED FOR AN ORDERLY TRANSITION PERIOD

Secretary Skinner, in the National Transportation Policy, committed the DOT and the Administration to a fair and effective national aviation noise policy. One element of such a policy which has been actively debated is the elimination of Stage 2 aircraft from the commercial fleet by a date certain. Suggestions for the final deadline range from the year 2000 to 2005. Following on from this proposal, is a companion proposal to restrict the authority of local airport operators to regulate aircraft operations based on noise considerations. Airborne supports both proposals. However, some industry and community parties which have joined in the discussion have overlooked an es-

sential element of any Stage 2 phase out plan. These groups have not seen the need to fashion a regulatory regime that will govern the actions of airports and air carriers in the transition period. It makes no regulatory sense, and would represent public policy at its worst, were airports to continue to be authorized to regulate the operation of Stage 2 aircraft that remain in service during the transition period. Indeed, failure to preempt the right of airport proprietors to regulate Stage 2 aircraft in the transition period would make a dead letter of the first plank of the noise platform -- the conversion of the fleet to Stage 3 by a date certain.

It has been Airborne's experience that airports, with increasing frequency and severity, have sought to restrict Stage 2 aircraft operations for defensive purposes, as well to encourage carriers to schedule flights at their airport with a higher percentage of Stage 3 aircraft. Defensive regulation is adopted to protect against the effects of another airport restricting Stage 2 operations. The operator of Los Angeles International Airport recently imposed a moratorium on Stage 2 operations declaring the move necessary to defend against the impact of regulations at other airports restricting Stage 2 aircraft. Los Angeles is even preparing to impose rules which will roll back the number of Stage 2 aircraft operations. Other airports have used different strategies to ban Stage 2 aircraft including placing Stage 2 aircraft operating restrictions in ground leases.

This unusual approach was taken in an effort to avoid FAA scrutiny of the restriction.

While it may be reasonable for Los Angeles to be concerned about an increase in Stage 2 operations, the effect of its rule, like that of the other airport rules, is merely to "export" its perceived noise problem to another community that has no limiting regulations. Obviously, if for compliance purposes, a carrier lavishes Los Angeles with a percentage of Stage 3 operations in excess of its Stage 3 fleet average another airport will receive less than its "fair share" of Stage 3 flights. Because of this simple fact, the down line airport from Los Angeles will naturally react to the L.A. rule and adopt its own Stage 2 restrictions. These cascading regulations will blanket the nation and cause carriers to accelerate the Stage 3 conversion process to meet local rules even through the national noise policy will allow for a longer transition period.

To avoid this spread of local regulation and to ensure integrity of the phased Stage 2 fleet withdrawal or conversion, Airborne submits that the national policy must include adequate protection from Stage 2 aircraft restrictions during the transition period. This can be accomplished in the same way we can protect the Stage 3 fleet and that is to preempt all local regulations of Stage 2 aircraft operations. This approach is no different than that already in place with regard to control of interstate motor carrier and railroad noise. Since 1972 the federal government has prohibited local noise regulation of these

surface modes of transportation that are not "identical" to federally established standards. Since cargo air carriers compete for traffic with interstate motor carriers and railroads, air carriers should enjoy the same level of federal protection from conflicting local noise controls as do these other modes.

There is no place in the federal system for undue regulation of interstate transportation services lest were are prepared to see the balkinization of the highly integrated and efficient integrated air cargo system which is today the envy of the world. Indeed, in a DOT report to Congress submitted just days ago, the DOT noted the cost and inefficiency of state regulation of surface movements by the package express industry and called for "... strong federal preemptive action." The same, if not greater, increased costs and inefficiencies are produced by local regulation of aviation noise and the same remedy -- effective and strong federal preemption -- is appropriate.

In considering the issue of preemption, Airborne urges the Subcommittee to carefully consider the fact that local control of a movable asset such as an aircraft presents considerable difficulties for the aircraft operator. Therefore, the capital assets of air carriers -- fast moving jet aircraft --that enter and leave multiple jurisdictions during the course of the day or night, must not be subjected to intensive local controls. Uniformity is essential when aircraft, like railroad engines or railcars, move from jurisdiction to jurisdiction.

As the Subcommittee is aware, the past few years have seen the local adoption of aircraft noise rules which lack consistency and are often in conflict. These rules are as much the result of the absence of a federal noise policy as a reaction to local complaints. This regulatory vacuum must be filled or even more intrusive and burdensome local regulation will follow. Nothing less than the continued growth of the interstate air express industry is at stake. To ensure the policy is properly structured, federal preemption of local control over Stage 2 and Stage 3 aircraft operations is essential.

Airborne's concern for a transition period free from local control is grounded in the simple, but undeniable fact that despite all of Airborne's best efforts, there will not exist for several years either the capacity or technology to convert the cargo fleet to Stage 3. As explained by the Air Freight Association in its written testimony, cargo carriers have traditionally relied, and must continue to rely on narrow-bodied Stage 2 aircraft (e.g. DC-9's, DC-8's, B-727, etc.) for the additional lift needed to satisfy projected market growth. These type aircraft, even when purchased on the used aircraft market, have many years of useful life remaining when properly operated and maintained. Airborne is contractually committed to purchase used Stage 2 aircraft equipment for its future growth requirements.

Airborne, as well as the passenger carriers, will be looking to convert these types of aircraft to Stage 3 by utilizing either so-called "hushkits" or new engines. While hushkitt-

ing requires less of a capital investment than does reengining, both noise mitigation techniques are far less expensive than the purchase of new aircraft even if this alternative were available on a large scale, which it is not. (The airframe manufacturers do not offer any narrow-bodied aircraft which can perform domestic all-cargo missions with the efficiency of DC-9, DC-8, B-727 aircraft -- even considering the enhanced fuel efficiency offered by newer technology aircraft). Given the lower capital cost of hushkitting (and to a lesser extent reengining) a program to convert the fleet to Stage 3 with relatively low cost but effective hushkits will bring the cost of conversion down to a financially affordable level. Obviously, a lower cost solution to the noise issue will permit the carriers with weaker balance sheets to buy into the program and, therefore, remain a competitive force in the marketplace. For this reason, Airborne has been actively exploring aircraft noise mitigation alternatives for over 5 years. This activity has resulted in several programs which are now coming to fruition.

With two other firms and with support from Pratt & Whitney, the manufacturer of the JT8D engine which is the mainstay engine of the U.S. commercial fleet, Airborne has developed an effective hushkit for the DC-9-10, DC-9-31 and DC-9-32 model aircraft. FAA certification of the hushkit for these model DC-9s is estimated to be in hand by late November of 1990. The same hushkit, with additional engineering and modifications, may also allow other DC-9 models (DC-9-33, DC-9-40, DC-9-50 series air-

craft) to achieve Stage 3. However, certification of the advanced hushkit for these models is not projected until late 1991 or early 1992.

Due to the need to manufacture in bulk many of the components of the DC-9 hushkit, it is estimated that only 12 to 18 hushkit shipsets can be manufactured in all of 1991. Once production is underway, this manufacturing rate is projected to increase to 72 to 80 sets per year starting in 1992. However, there are over 600 DC-9 aircraft in the current world fleet (500 in the U.S. commercial fleet) that are candidates for conversion to Stage 3 by use of this DC-9 hushkit. Assuming, conservatively, only 80 percent of these DC-9s are converted, and based on projected hushkit manufacturing rates, it will take over 7 1/2 years to produce all of the hushkits necessary to convert the DC-9 fleet. Carriers like Airborne, which are committed to the conversion of its DC-9 fleet to Stage 3, must be protected from locally imposed restrictions on Stage 2 operations during the transition period if they are to be able to go to the capital market and raise the funds necessary to enter into the conversion program. Airborne estimates it will incur over $ 225 million to purchase the hushkit technology to convert its projected 1995 fleet. This sum alone exceeds the company's current net worth, putting aside the cost of the other necessary capital improvements Airborne must make to retain its competitive position in the market.

As policymakers, you cannot expect Airborne, or any other carrier, to make investments of this magnitude and significance, if carriers cannot provide lenders or stockholders the assurance that the capital investment will be capable of yielding an adequate return. This assurance will not be capable of being given, if during the Stage 2 - Stage 3 transition period, Airborne will be precluded from operating its Stage 2 equipment free from local noise regulation. Therefore, the national noise policy must protect Stage 2 aircraft operators from local interference during the transition period. If no such protection is offered, then the phase-out deadline will be rendered a nullity, as local rules will result in the de facto acceleration of the phase-out deadline and make financing impossible.

It is appropriate to note here that all of the aircraft noise solutions being debated have one common denominator. That is, only the air carriers will be required to incur significant expense to meet the new policy objectives. Under the proposed noise policies airport operators will not be required to make any significant expenditures. Or, if they do, they will finance them by user fees or other pass through financing techniques. Further, local airport control of noise will be preempted by the federal government thereby eliminating any potential liability or cost on their part. Under this scenario, requiring airports to relinquish authority to control Stage 2 operations during the transition period, is neither unreasonable or inappropriate. In fact, requiring them to do so is good public policy.

Airborne's other major jet aircraft type -- the DC-8 aircraft -- is also slated to be hushkitted. Within the past two months an outside firm with whom Airborne has contracted has obtained FAA certification of a Stage 3 DC-8 hushkit for certain models of the DC-8 aircraft. However, as is the case with the DC-9 hushkit, it will take several years to produce a sufficient quantity of DC-8 hushkits to satisfy worldwide demand for the units. In addition, one model of Airborne's DC-8 aircraft is not currently capable of being retrofitted to meet Stage 3 based on existing technology. Therefore, Airborne is continuing to explore with outside firms the development of additional technology which, when applied, will permit this DC-8 model to meet Stage 3 noise requirements. Given the pace of technological advancement, Airborne is confident a solution will be forthcoming, although we cannot predict with certainty the timing of the breakthrough. For this additional reason, the Stage 2 transition period, one free of intrusive local controls, is essential to a well-formulated national noise policy.

PRIVATE RIGHT OF ACTION

The Subcommittee established that one of the issues to be explored in these hearings is a need for changes in the standards or procedures which govern aircraft noise related suits. Airborne's experience over the past five years has taught us that the lack of a private right of action under the Federal Aviation Act (49 U.S.C. § 1301 et seq.) or the Airport and Airway Improve-

ment Act (49 U.S.C. App. § 2201 et seq.), which precludes air carriers for mounting a judicial challenge to local noise regulations, has encouraged the proliferation of local noise rules.

As the Subcommittee may be aware, Airborne, and other cargo and passenger carriers, have had to actively defend their rights to provide air transportation service when confronted with locally proposed airport noise restrictions. Specifically, in the case of Airborne, numerous airports have targeted late night aircraft operations for elimination or reduction, even when there is no documented case of a nighttime noise related problem. In these cases the local rules are over reaching, impose a burden on interstate commerce, and are arbitrary, capricious and discriminatory. Airborne raises these and other arguments before the airport operator when presented with such local rules.

Although Airborne is prepared to defend itself from impermissible local rules, our ability to challenge such legally insufficient rules is severely constrained by a lack of a private right of action under the Federal Aviation Act of 1958 and the Airport and Airway Improvement Act of 1982. The majority view of the courts holds that neither the Federal Aviation Act nor the Airport and Airway Improvement Act provide for the right of private parties to challenge airport proprietor regulation of airport access. Such holdings leave Airborne without the ability to directly confront an airport proprietor's rule before an impartial tribunal. Rather, Airborne's primary remedy is to attempt to convince the FAA/DOT that the adoption of the local noise rule

violates federal law and to urge the agency to challenge the local action. Limited FAA/DOT resources often preclude the FAA/DOT from bringing potentially expensive and protracted litigation to halt improper local regulation. Further, the agency and the air carriers may not agree on whether a violation of federal law has, in fact, occurred. In any event, the air carriers' lack of an effective right to obtain judicial review of the local rulemaking is well-known by airport proprietors and, therefore, acts as an incentive to ill-advised local regulation.

Airborne believes it unfair to allow airports the right to exercise their proprietor's rights and at the same time to shield the exercise of that authority from judicial review when brought by the parties primarily injured by the local regulation. Therefore, Airborne urges that the Subcommittee support amendments to the Federal Aviation Act of 1958, and the Airport and Airway Improvement Act of 1982, to expressly provide for a private right of action and to establish an action for money damages and injunctive relief against airports which are found to be in violation of the law. The draft amendments are set out in the Exhibit to this testimony. In order to avoid undue legislative complications, Airborne's proposal avoids any major changes in substantive provisions of the law and instead focus only on additional procedural rights regarding access to the courts. These new rights would be tested under the existing body of substantive law under the Acts.

To enhance the remedies available to an air carrier challenging an airport rule, Airborne has provided that upon a finding of a violation, the airport would be liable to the injured party for damages, in law or equity. Experience has demonstrated that without the potential risk of damages, an airport operator has no real incentive to moderate its conduct if it is prepared to forego the use of federal airport grant funds that may be withheld from it by the FAA.

In a recent case, a major U.S. airport -- San Francisco International Airport -- temporarily gave up its entitlement to federal airport improvement funds rather than capitulate to the FAA's view that its exclusion of certain Stage 2 aircraft was unlawful. However, by court order the grant funds in issue have been ordered set aside subject to the outcome of the FAA's proceeding against the Airport. After over five years of litigation this case is now before the U.S. Court of Appeals. If, as is likely, the U.S. Court of Appeals affirms the FAA position, San Francisco will likely withdraw the offending rule and thereafter will receive all its backlogged airport grant funds. Therefore, other than having temporarily foregone the use of its funds, San Francisco will have suffered no significant damage as a result of its unlawful behavior.

On the other hand, the carriers subjected to the unlawful rule have been denied access to San Francisco International and have incurred actual damages. These damages are in the form of lost market share (by not being able to serve San Francisco)

and in the form of increased operating costs (associated with the cost of providing service through less conveniently situated airports). Therefore, for a private right of action to be effective, carriers which are damaged by illegal airport restrictions must be able to recover their losses from the offending airport operator since the FAA's grant fund leverage is not sufficiently large to force prompt compliance. As is the case with our nation's antitrust laws which provide for private lawsuits and treble damages, a private right of action and provision for damages under appropriate aviation related acts will act as a strong and effective deterrent to illegal and crippling local noise regulations.

Indeed, the attitude of the operator of San Francisco International Airport was so belligerent that even after the massive October 1989 earthquake the Airport would not permit Airborne to operate at San Francisco even for a short three-week period. This precluded Airborne from effectively serving the Bay area at this crucial time because Airborne could not operate its regular flights into nearby Oakland International Airport due to runway damage. San Francisco refused Airborne access to the Airport even though many of Airborne's customers, including the Federal Government and insurance, engineering, construction and financial firms needed express services to support their critical efforts to restore the City and its citizens to a state of normalcy. Not even direct contacts to the San Francisco City Administration by the Department of Transportation caused the air-

port operator to moderate its position. If, even in an emergency situation, an airport can refuse to access air carriers based on a discriminatory noise rule without fear of sanction, then the pendulum has swung too far. The creation of a private right of action under relevant aviation law will strike a better balance and help moderate the conduct of airport operators that today face no effective sanction if they adopt illegal noise regulations.

THE FEDERAL GOVERNMENT'S POTENTIAL LIABILITY FOR AIRCRAFT NOISE IS MINIMAL

Various groups have objected to federal preemption of airport noise regulation on grounds that this would subject the Federal government to liability for nuisance and inverse condemnation claims filed by plaintiff's who are exposed to excessive aircraft noise. However, this is not the case. If the Federal government preempted local regulation of airport noise its liability for nuisance and inverse condemnation claims would be nonexistent or minimal.

Individuals who reside in the vicinity of airports and who are exposed to excessive aircraft noise generally file nuisance claims and inverse condemnation claims against the airport owner or operator. The local operator is the entity which is sued because the Supreme Court has held, after consideration of the Federal Aviation Act of 1958, that it is the entity which is responsible to control the noise level at the airport and to obtain the necessary aviation easements required to support the

operation of the airport. Responsibility to control aircraft noise at airports has led local airport authorities around the nation to establish varying noise standards.

Even if the Federal government preempted airport proprietor rights to regulate aircraft noise it would be immune from any tort claim action or nuisance claim which arose out of exposure to excessive aircraft noise because the issuance of federal regulations which establish a permissible level of noise at an airport is a discretionary function of government. The Federal government has not waived its sovereign immunity under the Federal Tort Claims Act for discretionary functions and could not be held liable for a nuisance claim based on aircraft noise which complied with the federal regulation.

In the extremely unlikely event that the Courts determined that the Federal government was subject to a nuisance or tort claim for aircraft noise it could still defeat the claim by establishing that it had acquired by prescription an aviation easement. The acquisition by prescription of aviation easements may also be used by the Federal government as a defense against most claims of inverse condemnation. Once the airport operator and the Federal government have acquired the aviation easement by prescription it would not be required to compensate the plaintiff for the "taking" of his property. This is because by obtaining the aviation easement by prescription the Federal government will have already "taken" the right to fly noisy aircraft over the plaintiff's property by the continuous and open use of the air-

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port at high noise levels without objection from surrounding residents. Finally, any claims for inverse condemnation filed against the Federal government may be found to be barred by the appropriate statute of limitations. After the statute of limitation has expired the airport operator or the Federal government will be deemed to have acquired a prescriptive aviation easement.

Courts have held that a cause of action for inverse condemnation accrues when the noise at the airport constitutes a substantial interference with the plaintiff's use and enjoyment of his property and it results in a diminution of the property's market value. Generally, if this type of substantial inference occurred at all, it more then likely occurred at the majority of the airports in the United States in the early or mid 1970's when airport noise levels reached their peak. The failure of a plaintiff to bring a cause of action at that time may prevent him from filing a cause of action for inverse condemnation now after so many years have passed. The fact that aircraft noise has decreased with the introduction of a new generation of quieter aircraft and hushkitted aircraft will further tend to establish that a new "taking" the property has not occurred. Finally, the use of new quieter and hushkitted aircraft has resulted in fewer and fewer potential plaintiffs living in the 65 LDN area surrounding airports. Therefore, the possibility that the Federal government could be held liable for inverse condemnation actions if it passes legislation which preempts local regulations of airport noise is minimal.

CONCLUSION

Local control of aviation noise is undoing all of our collective efforts to increase airway and airport capacity. Further, the imposition of local noise regulations can, if left unchecked, further reduce industry competition levels by requiring noise reduction to be purchased without regard to the air carriers' ability to finance the aircraft engines or hushkits necessary to make the conversion to Stage 3. Extension of the policy favoring uniform regulation of interstate air transportation to aviation noise regulation is in the interest of the traveling and shipping public, the air carrier industry, airport proprietors and those living adjacent to airports. Airborne urges the Subcommittee to take the leadership roll to ensure this result.

EXHIBIT

The pertinent sections of each Act which Airborne proposes to amend are set forth below. The proposed amendments and proposed new provisions are indicated by underlining.

Federal Aviation Act

> Sec. 1007. (a) If any person violates any provision of this Act, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit issued under this Act, the Board or Administrator, as the case may be, their duty authorized agents, or, in the case of a violation of section 1114 of this Act, the Attorney General, or, in the case of a violation of sections 105, 307 or 401(a) of this Act, any party in interest, may apply to the district court of the United States, for any district wherein such person carries on his business or wherein the violation occurred, for the enforcement of such provision of this Act, or of such rule, regulation, requirement, order, term, condition or limitation; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such person, his officers, agents, employees, and representatives, from further violation of such provision of this Act or of such rule, regulation, requirement, order, term, condition, or limitation, and requiring their obedience thereto.
> . . .
>
> (e) Every person who violates sections 105 or 307 of this Act shall be liable to the party injured in an action at law, in equity or upon any other form of relief in the district court of the United States, for any district wherein such person carries on his business or wherein the violation occurred.

Airport and Airway Improvements Act

> Sec. 519(a)(4)(A) Judicial Review. - A person aggrieved by an order of the Secretary withholding, granting or making (A) approval of a grant application under paragraph (1), or (B) a payment under a grant agreement under paragraph (2), may obtain review of the order by petition to the Court of Appeals for the District of Columbia Circuit or the court of appeals for the cir-

cuit in which the project is located. Such petition shall be filed no later than 60 days after the date on which the order is served on the petitioner.

(B)(1) If a person violates section 511 hereof, or any rule, regulation, requirement or order thereunder or any term, condition, or limitation of any assurance given under this Act, as the case may be, any party in interest may apply to the district court of the United States for any district wherein such person carries on his business or wherein the violation occurred, for the enforcement of such provision of this Act, or of such rule, regulation, requirement, order, term, condition or limitation; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such person, his officers, agents, employees, and representatives, from further violation of such provision of this Act or of such rule, regulation, requirement, order, term, condition, or limitation, and requiring their obedience thereto.

(B)(2) Every person who violates an assurance as provided in section 511 hereof or any rule, regulation, requirement or order thereunder or any term, condition or limitation of any assurance given under this Act, as the case may be, shall be liable to the party injured in an action at law, in

FEDERAL AVIATION NOISE POLICY

TUESDAY, OCTOBER 2, 1990

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:03 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. OBERSTAR. The Subcommittee on Aviation will come to order. Today we continue our hearings on aviation noise policy. There was a clear opportunity when the Secretary of Transportation began his national transportation policy, for him to come to closure on this issue; for a variety of reasons, he did not, most of which I am not aware of. But the fact is that a big void exists in transportation policy, particularly with respect to aviation, unless we deal with noise.

This year the subcommittee has succeeded in bringing a reauthorization bill to fruition and passing it through the House. The bill dealt with the technology of aviation, the facilities and equipment account with ways to improve the Air Traffic Control System—the airport construction side, to increase airport capacity, to deal with noise, and if we do not deal with noise then construction and capacity will be ineffective.

We invited the Secretary to testify; regrettably, he chose not to. I don't know whether that means that the Department of Transportation is proceeding on its own account developing a policy as yet unknown to the subcommittee, or whether they're not prepared to address the matter at a policy level at this stage. We certainly will keep the record open, because there will be hearings in the next Congress and ample opportunity for the Secretary to testify at another time when, hopefully, they do have a position or at least are willing to discuss options.

At this point, we're not seeking hard, fast concepts or commitments to proposals but to explore ideas and opportunities to deal with this issue, because it has to be done. And we realize, as I said at the outset of our hearings last week, that the Administration can't do it alone, and the Congress can't do it alone, but somebody has to move, and this subcommittee is committed to moving, to mobilizing the national dialogue on this subject. That is the purpose of these hearings and the spirit in which we have undertaken them.

So I want to restate my position, that in inviting Administration witnesses, we are not looking to corner anybody, we're not looking to put anyone on the spot, but to get the best possible thinking on

this subject so that we can, at this stage, develop a sense of direction instead of letting the issue drift as it has done for far too many years under both Democratic and Republican Administrations. The time has come to close that gap, we've got to do it, and these hearings are the beginning toward that objective.

Does the gentleman from Iowa wish to make any opening observations?

Mr. LIGHTFOOT. Well, thank you, Mr. Chairman.

I would only observe that your opening comments probably let you identify very well now with an airline captain who's subjected to flow control and making excuses to the passengers why you're going to be late at your destination.

Mr. OBERSTAR. Yes.

Mr. LIGHTFOOT. This is an important issue, and we certainly don't want to make light of it in any way, shape or form, but maybe on a bit of a lighter note to start our day off, I'll share with you an experience that one of my air traffic controller friends shared with me a few years back that deals with noise.

Out on the West Coast, there was a PSA flight, and the conversation went something like "PSA Flight 230 turn left heading 270 for noise abatement," which, of course, the controllers are supposed to tell you why they give you a new heading to fly, and the pilot complied with it, and then he was somewhat puzzled because of the altitude he was flying at, and he called back and he said, "Center," he said, "PSA 230," he said, "Do you realize we're at flight level 270?," to which the flight controller replied, "Captain, do you realize how much noise two 727s make when they come together?" [Laughter.]

I would hope that we are going to approach this noise problem in a little more serious nature than that, but it does create some severe problems, particularly in the large metropolitan areas around the Nation, and I think there are probably some workable answers to it, and hopefully these hearings will bring some of these forward, and, Mr. Chairman, I compliment you for holding them.

Mr. OBERSTAR. I think your story aptly describes the purpose of these hearings, because I think capacity and economic growth in the aviation sector are headed on that very same collision course, unless we get a controller somewhere along the line to steer the two parties apart.

[Mr. Costello's prepared statement, submitted for the record, follows:]

STATEMENT OF HON. JERRY COSTELLO

Mr. Chairman, I am pleased to be here to continue our investigation into the effects of and possible solutions to the problem of aviation noise. I want to commend you for conducting such an in-depth look into the issue, which will help this Committee to craft solid legislation on the subject at some point in the future.

During the past two hearings, we have heard from citizens in various areas of the country who have been affected by this problem. I am sure that their experiences will be instructive for us and I look forward to hearing from today's witnesses.

Mr. OBERSTAR. Let us proceed with Mr. Dale McDaniel, Deputy Assistant Administrator for Policy, Planning and International Aviation for the FAA.

Thank you for being here, Mr. McDaniel.

TESTIMONY OF DALE E. McDANIEL, DEPUTY ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING AND INTERNATIONAL AVIATION, FEDERAL AVIATION ADMINISTRATION

Mr. MCDANIEL. Thank you, Mr. Chairman, members of the subcommittee. I'm pleased to be here with you this morning to discuss our overall efforts to reduce aircraft noise.

The Department of Transportation and the Federal Aviation Administration recognize that noise is a significant concern in many communities throughout the United States. These concerns also pose an equally serious concern regarding the Nation's aviation system. Our aviation system is increasingly an important part of our national economy. Eighty-seven percent of all of the passenger traffic moved in interstate commerce in 1989, and virtually all overnight cargo shipments moved in interstate commerce.

Aviation now accounts for 5.6 percent of our Nation's Gross National Product, and one out of every 14 civilian jobs in the United States depend on aviation. In addition, the aviation system is an international system that supports and assists the United States' business to compete in the global economy. Demand for U.S. domestic air travel alone is projected to increase by at least 60 percent by the year 2000 and domestic and international air cargo shipments by as much as 340 percent by the same period.

The aviation system's ability to respond to this demand has been seriously affected by the reactions of local communities to aircraft noise. Local communities have been successful in pressuring airport operators to impose operating restrictions on existing facilities, as well as opposing proposed airport expansions and the development of new airports. By our count, 47 major airport capacity enhancing projects were either stopped, altered or significantly delayed as a result of noise concerns.

We are concerned that these noise constraints threaten the ability of our aviation system to respond to present and future traffic demands. At the same time, we recognize that these operating restrictions represent the response to genuine noise concerns. We estimate that three million people currently reside in areas where noise levels exceed the standard for compatible land use.

Some have suggested that the noise problem exists because the Federal Government has not acted. I disagree. The three million residents in serious noise impacted areas are far fewer than the seven million people living in such areas in the mid-1970s, and we believe that by the year 2010 there will be just over one million people living in such serious noise impacted areas. These dramatic gains result almost exclusively from the introduction of quieter aircraft.

We completed the phase-out of the noisiest, or Stage 1, aircraft in 1986. That resulted from a decision taken by the Federal Government in 1976. Shortly after that, in 1977, the Federal Government mandated that all newly certificated designs must meet even more stringent Stage 3 noise standards. As a result, the aviation industry is well underway to converting to an all Stage 3 fleet. Currently, 40 percent of the domestic fleet is Stage 3.

When an all Stage 3 fleet is achieved, existing technology will have been exhausted. That technology was developed through

FAA- and NASA-supported research programs 10 to 25 years ago. There is no proven technology to achieve further substantial noise aircraft reductions, and this creates a significant challenge for making further progress in the noise area.

Secretary Skinner has pledged Federal leadership in finding and implementing workable solutions in achieving progress, and we are moving aggressively in several areas. They are, one, continued research to identify new technologies to reduce aircraft noise; two, improving compatible land use; three, a review of concerns with the standard noise metric; four, implementation of new procedures to screen the environmental impact of air traffic changes above 3,000 feet; and five, strengthened FAA emphasis on environmental concerns. I would like to briefly address each of these areas.

With respect to new technology, Administrator Busey and NASA Administrator Truly have recently agreed to a cooperative noise reduction technology research program. In addition, we have created a Noise Subcommittee of our recently established R,E&D Advisory Committee to advise us on the type of research which would be useful to pursue. Most experts agree that significant results are obtainable.

While we will continue to work with NASA and others to achieve these results, it should be made clear that it will not be easy to develop significantly quieter air frames and aircraft engines. Further noise reduction is technically a very difficult challenge, and realistically, even if that research is successful, we cannot expect quieter aircraft until well into the next century.

That leads to our work regarding compatible land use, the second point. Communities must find new and creative ways to manage better the land use around airports while avoiding operational constraints which limit the capacity of existing airports and threaten our ability to expand the system. We will work with impacted communities and industries to encourage the development of local tools for ensuring compatible land use.

Since the authorization of the Airport Improvement Program in 1982, more than $26.3 million has been granted to airport sponsors to develop noise compatibility plans and $848 million to carry out the recommendations of those plans. As you know, under AIP, a minimum of 10 percent of available funds is set aside for noise compatibility planning and program implementation. The larger share of these funds is used for acquiring noise impacted areas adjacent to airports and for the soundproofing of schools and residences.

With regard to the noise metric, the third point, we are also aware that not everyone is satisfied with the existing standard method for measuring noise impact. As you will recall, that metric—the day/night average sound level, or DNL—was developed in response to the 1979 Aviation Safety and Noise Abatement Act. In recent years, the adequacy of this metric has been challenged by some communities. As a result of these concerns, FAA and the Environmental Protection Administration have agreed to a joint project to evaluate the DNL metric.

In addition, FAA Deputy Administrator Harris and EPA Deputy Administrator Habicht have agreed to work with the Department of Defense, Veterans Administration, HUD, CEQ and Department

of Justice to examine our policy with regard to a number of other aviation noise concerns, which I list in my written statement. While the DNL metric has been criticized, we believe it is the best available indicator of aviation noise annoyance. It has proven remarkably successful since being adopted 10 years ago as the national standard.

If there are changes to that standard which would improve its usefulness, we would certainly support them, but we should make it clear that we do not favor moving from a standard national approach to a series of different measures at individual airports. We believe that many of the criticisms of the standard noise metric are in reality criticisms that not everyone who is annoyed by aviation noise lives within the 65 Ldn contours. That leads to our fourth activity on new screening procedures.

In recent months, the FAA has become increasingly aware that there are situations where noise levels outside the Ldn contour may create considerable controversy. This was certainly the case with regard to our Expanded East Coast Plan. We seriously underestimated the reaction to air route changes which have significantly improved the efficiency of New York area airports. Considerable time and effort is now being devoted to mitigating those effects as much as possible, although it is clear that once a negative reaction to noise has been created, it is virtually impossible to recover.

We hope to avoid the New Jersey experience in the future. To assist in this, two weeks ago we issued additional guidance for assessing increases in aviation noise exposure due to air traffic changes above 3,000 feet. This guidance is built on the premise that regardless of ambient noise levels, a sudden sharp increase in the existing level may cause considerable adverse public reaction. This tool will be used by FAA in planning future air route changes and will help to minimize noise impact.

In addition to these operational measures, FAA has issued internal guidance regarding management of environmental responsibilities. This guidance signifies an important first step in building a strong environmental reputation for FAA. It initiates changes designed to heighten the agency's sensitivity to environmental concerns from planning through implementation.

I recognize that the Federal Government's past record and our recent actions leave unanswered a number of questions of interest to this subcommittee. Such questions as facilitating the orderly and expeditious phase-out of Stage 2 commercial aircraft and avoiding capacity limiting restrictions are difficult policy issues. While these and related issues are of considerable interest to the Administration, we have not concluded our own deliberations on what, if any, additional Federal initiatives may be desirable.

Mr. Chairman, we commend you for providing a forum for public discussion of these issues and believe that this discussion will be helpful in shaping our own views. Mr. Chairman, that concludes my prepared statement, and I would be pleased to respond to any questions.

Mr. OBERSTAR. Thank you very much, Mr. McDaniel, and I do appreciate the efforts of FAA in the area of technology review and insistence upon use of technology to quiet aircraft and its focus on the land side—that is, the need to control growth and expansion of

population and manufacturing and commercial activities into the noise footprint of airports. You've addressed that matter to some extent in improving compatible land use, as you point out, but there's an area of FAA responsibility that you, I think very commendably and candidly, did a mea culpa on.

On page 7 of your statement, you say, "We seriously underestimated the reaction to air route changes in the New York area in the East Coast Plan." That would be stating it mildly. I'm sure that your representatives who sat in on the hearings last week reported back to you the rather sharp statements made by witnesses, very harsh judgments visited upon the FAA and the noise that was visited upon them because of the route change.

What came across very clearly was the unwillingness of FAA to discuss with communities the noise impact of route changes made for safety or efficiency purposes, and that's something I'd like you to discuss. Below 3,000 feet, yes, but above 3,000 feet, no. We don't need to do an environmental impact statement. Why can't there be a dialogue with communities when a routing change is going to be made or is necessary and get the input of people on the impact noise would have upon them resulting from alternative changes?

There may be only one safe way for aircraft to take off and land, and that has to be explained to people. If people understand that, they're perhaps a little more willing, maybe grudgingly, but at least if there is a rationale, people can accept it. What they can't accept is the statements or the attitudes that have come across from the various populations that testified before our committee that "The FAA really isn't interested in a noise impact upon our community. They had one way—their way—and they didn't listen to us."

That is what this committee heard. We obviously heard from those who were very upset. We didn't hear from any folks who came in and applauded the route changes and the new noise that they were accepting and said, "This is good for us."

Mr. McDANIEL. Several comments, Mr. Chairman. I think you correctly observed that noise is not necessarily a zero sum game but is in fact a negative sum game. Many complaints come as a result of new noise, but few kudos come as a result of noise relief. What we discovered in the Expanded East Coast Plan was that communities living in day/night noise level contours of 50 to 55, which are the communities that were expressing concern, were all outside areas where we would expect a significant noise reaction. In fact, they did react, and they reacted strongly to changes that were not explained to them in advance, nor did they anticipate their happening.

Two things happened with regard to aviation noise. One is physical, and the other is psychological. People react individually to the physical events of noise somewhat in different ways. It's more annoying to some than to others. They also react to the psychology of why they think the noise is happening, and I believe you touched on this. If they believe that the noise is for a good purpose and if people understand and care about their reaction to noise, they are far more tolerant than if they think someone is not paying attention and noise is being foisted upon them without recourse.

Since we put into place the Expanded East Coast Plan, we have been trying very hard to recover relationships to communities that were damaged by not advising them in advance. Our Regional Administrator, Mr. Peterson, has spent countless hours meeting personally, sometimes on a weekly basis, with many of the communities that testified before you.

Mr. OBERSTAR. If I may interrupt your stream of consciousness at that point, wouldn't it have been better to have done that before rather than after?

Mr. MCDANIEL. Absolutely. Absolutely. In my comments, Mr. Chairman, that was the lesson that we learned. We learned a similar lesson, I believe, in Detroit where we also made some changes without advising the community. There was a somewhat different situation in Seattle in which we were participating in community discussion of the changes that were being made.

The new procedures that we've put into place are intended to alert us to those situations in advance so that we can begin a dialogue with the community. It's not in our interest, either, to irritate the community as a result of noise.

Mr. OBERSTAR. Well, safety must be the first consideration when dealing with matters of arrival and departure of aircraft. There is no question. And no population group would dispute that. Secondly, there are probably a variety of ways to operate aircraft safely at any given airport. Maybe the range is somewhat more limited for some than for others because of weather conditions, because of structural obstacles. It may be very difficult to approach Tegucigalpa, for example, other than flying between those two mountains, and if you happen to live in that little valley there, you're going to hear the noise all the time, because there's no other way to get there.

But for most airports in the United States, you know, there are a variety of ways that you could approach, and within those parameters, given the FAA's first priority for safety and second priority—I don't know if you have a third—couldn't you bring the communities in and say, "These are the factors that we have to take into consideration in order to bring aircraft in and out of this airport in the safest way possible for both the passengers and the aircraft in the air and the people on the ground. We don't want to have accidents that kill people where they live and where they work. So now, given this range of options, what do you think are going to be the impacts on populations at various distances from the airport?"

It may be that the environmental impact statement process is too long, too cumbersome, and if so, I'd like to have your thoughts about that. It may not be the best way to resolve these differences, and if not, then there ought to be some other approach suggested by the FAA. In the meanwhile, people are going to insist on environmental impact statements increasingly, some genuinely to get to a better resolution, and others for the simple purpose of using the EIS process to stop any changes. Maybe even to stop increases in traffic. Your thoughts on the EIS process as it applies to arrivals and departures and flight patterns at airports?

Mr. MCDANIEL. We believe, Mr. Chairman, that the procedures which we have just instituted for such changes, which are designed to identify sharp increases in noise levels as a result of route

changes, calling for an environmental assessment, which is an evaluation of alternatives, is the most effective planning tool to use in evaluating such changes. That stops short of, in all cases, a full environmental impact statement, which, as you correctly observed, can be quite time consuming and at the same time sensitizes FAA to the potential impact that these changes are having on the community and would begin a dialogue with that community when it's appropriate.

We think this is a responsible thing to do. We have looked at these guidelines in connection with the Expanded East Coast Plan and the Detroit air route traffic changes and find that we would have triggered this evaluation early on in the process and begun a public dialogue, which is the thing that you are seeking and, I believe, the correct thing to do.

Mr. OBERSTAR. Do you in the FAA and do they in the Department of Transportation, starting with the Secretary, believe that it is necessary at some point in this process to come to a national policy on noise?

Mr. MCDANIEL. Both the Administrator and the Secretary are very concerned with the aviation noise issue. The Secretary articulated in the national transportation policy the principles upon which he thought we should proceed, and he has told the FAA how those principles might better be filled out in terms of taking us down the road. But he is Committed, I believe, to providing leadership in this area; he has not committed himself to the form which this leadership will take. Yes, it is an issue which is of concern to everybody.

Mr. OBERSTAR. Now, having a national policy does not mean that it has to apply uniformly everywhere in the United States. This Committee has been through natural diversity in other programs under its jurisdiction, and the same principle has to apply here in aviation. And, believe me, my concern is that this patchwork, I guess is the best way to describe it, of a system that we have today, could break down and collapse. We have airport authorities in some cases that are responsible for land use planning; in other cases, the airport authority is responsible only for the airport. Another local governing body is responsible for land use planning. In some cases, the city operates the airport and does land use zoning. In most cases, the Federal Government does nothing.

There is no regulation I know of that the FAA has issued over the years to prevent use of Federal funds if certain developments take place certain distances from the airport. The possibility exists there, but the FAA has been very reluctant, the Department of Transportation has been very reluctant to use that authority, and we've got to come to closure on those issues.

That's why I'm starting this dialogue now, starting this thinking process going, and along with that is the question—this will be my last question for the moment—of liability of the Federal Government in the event that some noise restrictions are imposed by the Federal Government preempting local government. What is the current thinking within the FAA and the Department about the extent of Federal liability exposure should such limitations be imposed preempting local government authority?

Mr. McDANIEL. There are two schools of thought with regard to liability. Most of the liability which exists, exists as a result of a taking, and that is a diminution of the property values as a result of noise exposure. If one were to look at the history of payments of liability cases against individual airport sponsors, the record has been quite good. There have been, I believe, in a survey that I saw through 1983, damages in the order of $4 million paid, and if you add out of court settlements perhaps another $20 million to $25 million, which would suggest that at the lower end the liability exposure, if the Federal Government were to preempt certain restrictions, would not be too high.

On the other hand, I believe there are genuine concerns that the situation may well change on a factual basis if the Federal Government were to assume liability. It might change in of several ways. Airport sponsors may not be as eager to maintain the controls that they can now maintain and pass along unreasonable restrictions to the Federal Government only to be disapproved, thereby creating the expectation that the Federal Government was going to do something more and opening the deep pockets of the Federal Government to a larger liability flame, which would have potentially consequences far beyond the historic consequences that were paid.

I think that there is divided thought, both within FAA and the Administration, as to which of these courses might occur, but there is a serious concern within the Administration about the liability aspects of any preemption.

Mr. OBERSTAR. Clearly that's an area to which a great deal more thought needs to be devoted and perhaps some of that thought committed to paper and papers written and discussed and debated, but we need to put more effort into that issue.

At this time, the Chair recognizes the gentleman from Iowa, Mr. Lightfoot.

Mr. LIGHTFOOT. Thank you, Mr. Chairman, and thank you, Mr. McDaniel, for coming this morning.

I guess one of the things that's obvious from the questioning here this morning and from your testimony—I think you alluded to it as well—is you've been charged with a very difficult task, number one, in defining what is noise. I live in Iowa. I go home every weekend, and I live out in the country, and at night, you know, you hear a cricket or two, and once in a while a pheasant will crow maybe or in the winter time maybe a coyote will howl or something.

I come in here four days a week. I've got a small apartment down in Alexandria, and you've got fire trucks and the traffic and all that going by, and yet last night I was talking to a lady who had just moved into our apartment complex from New York, she's retired, and she was just ecstatic about what a wonderful quiet neighborhood we were in. So noise, I think, is in the eye of the beholder. I think it's a lousy, noisy place to live. And so far the metric 65 level is really about the only thing we're using to define noise, and I don't know where that debate is ever going to end.

Let's talk about safety for just a moment. The plan that was put in on the East Coast, from all the testimony and everything, has increased noise. But did it accomplish its original goal, which was basically to reduce congestion and delays in the New York area?

Mr. McDANIEL. Yes, it did. It in effect put into place a four-lane system for the delivery of traffic in lieu of the single lane delivery which had existed before the Expanded East Coast Plan went into effect. The immediate effect of that was a sharp reduction in the delays, particularly at La Guardia Airport. Now, those delays have tended to creep back up since the Expanded East Coast Plan has become operative, and we are concerned about that increase in the delays, but it had the desired effect that we intended when it went into place.

Mr. LIGHTFOOT. In light of the complaints that we've heard about the New Jersey situation, I understand there is some special use military air space that's off shore. Have you looked at the possibility of using that as a north-south route to move some of this traffic off shore and get the noise away from the populated areas?

Mr. McDANIEL. I don't believe that there is any alternative that we haven't looked at in terms of noise relief, including the military air space areas. The difficulty with the idea of all traffic going out over the water is that it would tend to return us to the single lane highway system that we had prior to the Expanded East Coast Plan if we tried to do all of that routing.

We believe that we have done about as much as we can do with regard to noise mitigation based on the operation that's now in place, and we have spread the noise about as evenly as we possibly can, but we will continue to look at all other possible areas of relief.

Mr. LIGHTFOOT. Then, if I'm understanding what you're saying, it's that if we would shift the aircraft off shore again, then we're going to start to see delays and congestion and all that come back and haunt us.

Mr. McDANIEL. Yes.

Mr. LIGHTFOOT. When the country first started getting sensitive to noise, it was long before I became a member of Congress, but as a pilot and a flight instructor, I remember the first time I was on an airliner and shortly after takeoff the pilot pulled back the power to reduce noise, and if I could have gotten out of the aircraft at that point, I would have, because, quite frankly, instructing student pilots, the last thing in the world you ever do is reduce power on climb-out. You use all you've got until you get high enough that you're safe, and we had basically just broken ground, and all of a sudden, you know, the throttle is coming back, which may be the reason I had a bypass a couple years ago. [Laughter.]

But are there cases where we do have airlines and captains that are basically being forced to fly in an unsafe manner just to comply with noise regulations?

Mr. McDANIEL. We don't believe that there are any situations that are unsafe. We are concerned that there not be a proliferation of noise abatement techniques which call on pilots to use different techniques in different airports. We are particularly concerned with any tendency of airports to move toward a single event measuring point which either rewards or penalizes pilots as a result of the specific noise that they make as they depart or arrive at an airport, because we believe that does provide a temptation for pilots to do things which might be marginally safe. But there are no existing procedures which we believe are unsafe.

Mr. LIGHTFOOT. Another area that's a problem with noise is people who move and buy a house next to the railroad track, then they complain about the trains going through at night, when the track was there long before the house was built. We've had cases with Dulles out here, DFW, that were essentially built out in the country. Residential encroachment came in around the airports, and now the people that live there are complaining about the noise, and the airport was there before they got there.

There's not any great deal of new construction going on with airports, but the city of Denver is in the process of putting up something new. What could be done or should be done at the Federal level to assure that local zoning authorities, local planning authorities will leave adequate clear space around any new airport that's built that will keep people from moving in and then complaining about the noise?

Mr. MCDANIEL. That's one of the most difficult issues associated with aviation noise. As I mentioned during the testimony, virtually all of the gains which have been made have been made as a result of quieter aircraft technology. If we had protected the environs of airports on the land side to the same degree that we've made progress in the air, we would be in a far different situation today. There are communities around major airports which, even as we speak, are continuing construction in Ldn 65 contours at major airports. We think eventually that simply leads to a choking off of the aviation system.

Many airport authorities do not have control over surrounding jurisdictions that dictate the type of land use that surrounds their airport. They're often surrounded by a variety of communities with their own zoning jurisdictions. One of the most effective tools which has been employed, I believe, has been employed in the State of Maryland, where the State has created a State-chartered zoning authority which has jurisdiction over the land use surrounding Baltimore-Washington International Airport so that nothing happens within the contours of the airport that are not approved by the central zoning authority. They have in effect reinforced the power of the airport to deal with the surrounding communities.

The State of California has developed a similar, although somewhat softer, approach with regard to airport zoning, which may be equally effective. If one is to move in this area, and it's not clear that the Federal Government wants or needs to move into areas which are very traditionally strongly locally controlled, the airport needs to be empowered in some way to more effectively deal with those communities that surround it.

Mr. LIGHTFOOT. You mentioned new technology as making the major gains in quieter aircraft that we've had so far. What would be your position on moving forward with such things as the tiltrotor technology, which we basically now have in place, we know it works, it flies. In fact, I've flown the XV-15. It looks to me like those are some areas where not only can we solve some noise problems but some congestion problems and traffic problems as well. Is the FAA in the position to offer encouragement on developing those kinds of technologies and going forward with them rather than letting them be developed by Airbus or Mitsubishi or someone else, that we do it in this country?

Mr. McDANIEL. We are very supportive of the tiltrotor technology, and we agree that the potential for both congestion and noise relief, particularly in shorter markets, could be significant.

Mr. LIGHTFOOT. Final question. The Airport and Airway Authorization Bill that was recently introduced over on the other side of the Hill in the Senate has some provisions on aircraft noise in it. Do you have an opinion on those provisions at all?

Mr. McDANIEL. Those provisions certainly represent one approach to dealing with the noise issue, which would put the Federal Government in a much stronger posture than it has been historically with regard to dealing with local operating restrictions. I think that probably represents strongly one perspective of the three perspectives that need to be brought to the noise issue, and those perspectives are from the standpoint of the airlines, which must operate in the national system, the perspective of the airports, which must balance providing the capacity for those airlines and response to the local communities, and the local community perspective. It represents very well, I think, the national approach, which would bring uniformity to the system and as such, I think, stakes out a very clear option which requires serious examination.

Mr. LIGHTFOOT. We appreciate your coming, and thank you for answering these questions.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

The gentleman from Texas, Mr. Geren.

Mr. GEREN. No questions, Mr. Chairman.

Mr. OBERSTAR. The gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you.

Mr. OBERSTAR. Former chairman of the subcommittee who grappled with this issue for many years.

Mr. MINETA. Thank you very much, Mr. Chairman.

Mr. McDaniel, it's good to have you here before us. Let me ask—and I apologize for not having been here for your portion of the testimony—how proactive in terms of a noise policy is the FAA taking to try and deal with the whole issue noise? In other words, whether it be on the land side or on the air side, how proactive in terms of developing policy is the FAA/Department of Transportation?

Mr. McDANIEL. Within the constraints of the existing laws, I believe that we are behaving very proactively. As I mentioned, we have made available nearly a billion dollars for land acquisition and soundproofing purposes around airports; we have encouraged and continue to encourage very strongly that communities adopt what is a voluntary part 150 analysis that brings together the airports, the airlines and communities to devise a noise plan that are tailored to the individual airports; we look very closely at operational restraints that are imposed on the system, and when we believe those restraints violate the existing legal standards—that is, they don't respond to the noise problem, they're discriminatory or they have an undue burden on interstate commerce——

Mr. MINETA. Could you give me an example of that, sir?

Mr. McDANIEL. Yes. In the case of San Francisco Airport, there was a restriction put in place in 1986, I believe, which said that no hushkitted 707 aircraft could operate at that airport, when in fact there were noisier aircraft of other models operating at the airport.

We believed that that was a discriminatory standard and tried to work——

Mr. MINETA. But wasn't that done because there was a lack of a Federal standard?

Mr. MCDANIEL. No, I don't believe so. There were, at that time, very clear Federal standards——

Mr. MINETA. I'd like to have you give me an example, then, of a Federal standard against which San Francisco would have been able to apply a template against carriers operating in San Francisco other than the fact that they decided that they would go against an air carrier using a hushkit.

Mr. MCDANIEL. The standard, Mr. Mineta, would be the Stage 2 noise compliance standard. The aircraft which was precluded from operating met the Federal Stage 2 standard. Other aircraft which also met the standard were permitted to operate, and this particular aircraft was discriminated against. So we think there was in this case a very clear Federal standard which was not applied by the airport. That case caused us considerable concern.

Mr. MINETA. When you say that there were other noisier airplanes, other noisier airplanes that were subject to——

Mr. MCDANIEL. That could operate at the airport while the quieter aircraft that was precluded could not operate at the airport. Yes, sir. We found that to be discriminatory.

Mr. MINETA. All right. That's to keep San Francisco from doing something on its own. What about, again, something—in other words, what you did in that action was to not allow a hushkitted airplane to come into San Francisco. So in effect you made it a noisier airport through your action. You didn't make it less noisy. San Francisco wanted to make it quieter by saying, okay——

Mr. MCDANIEL. There were options available to San Francisco to make the airport quieter which would have been non-discriminatory, but——

Mr. MINETA. Okay. Would you give me another example?

Mr. MCDANIEL. Another example would be the case of Long Beach, which was a concern brought originally by Western Airlines and then Alaska Airlines about the number of operations which were permitted at Long Beach. In that case, the Federal Government, at the appeal level, filed an amicus brief with the court which remanded to Long Beach a review of the noise regulations which they had proposed.

Mr. MINETA. Now, in each of these cases, though, what you're doing is saying to the local community, "You've got to do it." Is there anything that says in policy, "We at the Federal level, FAA, are willing to take some responsibility and leadership in this noise area?"

Mr. MCDANIEL. Yes. As I mentioned, the phase-out of Stage 1 aircraft, the requirement to move from Stage 1 to Stage 2, was Federally mandated and completed in 1986. The standards——

Mr. MINETA. Okay. Again, you're imposing a standard on the airline or the air frame manufacturer.

Mr. MCDANIEL. Yes, sir.

Mr. MINETA. Okay. What I'm saying is, is there anything that you are doing—and I guess I'll just say it right out. Are you willing

to assume liability, financial liability, for noise at a given airport, or are you dancing on a pin in order to avoid that responsibility?

Mr. McDANIEL. Under the current law, the responsibility rests with the airport, does not rest with the Federal Government.

Mr. MINETA. I recognize that.

Mr. McDANIEL. One of the concerns——

Mr. MINETA. That's the dance I'm talking about. That's the St. Vita's dance that you folks keep doing to keep shoving it on the local governments to do it. I can wear my Mayor's hat. In the city of San Jose, we had more—the total prayers against the city of San Jose in terms of airport noise exceeded the claims against Los Angeles, and at that point, Los Angeles was considered to be where the most lawsuits were filed, which is true. But in terms of prayers, it was greater against the city of San Jose. Now, that was going to be our responsibility to eat that, not the Federal Government.

Mr. McDANIEL. Yes, sir. Under the existing system——

Mr. MINETA. And I think that's where you folks keep on shoving it to local government to avoid that responsibility at the Federal level. Or you shove it to the airlines and say, "Okay, you've got to retrofit, you've got to use Stage 3 aircraft," and that's why I say I don't think FAA really takes a proactive position in terms of noise abatement, except to shove it somebody else to do.

Mr. McDANIEL. That is the issue with regard to preemption, and if the Federal Government moves to restrict an airport's ability to impose limits apart from the existing legal tests—and those aren't FAA tests, those are the court legal tests of what an airport can or cannot do—if the Federal Government moves beyond that, there are implications with regard to liability, and that is a serious question for the Administration. There's no doubt about it.

Mr. MINETA. When we institute something like, let's say, the East Coast Plan, to what extent does that go through some kind of a review with the communities and with carriers, airports themselves, others, before something is implemented?

Mr. McDANIEL. In the case of the East Coast Plan, it was reviewed with the carriers and with the Port of New York Authority. It was not reviewed with the community, and we have changed our procedures as a result of our experience with the Expanded East Coast Plan to more carefully review the environmental impact of the route changes and to assess the environmental consequences of such changes with the idea of involving the community at an earlier date. So we are trying to preclude the New Jersey and New York experience from happening again, and we think we have put in place the tools to do that.

Mr. MINETA. Are you subject to NEPA?

Mr. McDANIEL. Yes, sir. And what we did in the Expanded East Coast Plan was in full compliance with the environmental procedures which we operate under in the——

Mr. MINETA. Full procedure in the sense of environmental impact statement or environmental impact assessment?

Mr. McDANIEL. Both.

Mr. MINETA. You went through the full procedures involving——

Mr. McDANIEL. No, we did not do an environmental impact statement.

Mr. MINETA. Well, I just asked you that.

Mr. McDANIEL. Then I misunderstood your question.

Mr. MINETA. I asked "or environmental assessment?"

Mr. McDANIEL. The environmental procedures under which we operate in compliance with NEPA did not require the preparation of an environmental impact statement for the Expanded East Coast Plan.

Mr. MINETA. Okay, let me ask you about the East Coast Plan. Did you subject that to the environmental impact statement process or the environmental impact assessment process on the East Coast Plan?

Mr. McDANIEL. We made a finding of no significant impact, which is permitted under the existing environmental procedures and was done properly under the procedures.

Mr. MINETA. Well, again, I've got to beg to differ with you, Mr. McDaniel. Could you answer the question? Did you or did you not?

Mr. McDANIEL. We did not do an environmental impact statement.

Mr. MINETA. Did you do an environmental impact assessment?

Mr. McDANIEL. We did not do an environmental impact assessment.

Mr. MINETA. Thank you. Are you now subject to doing environmental impact statements and/or environmental impact assessments?

Mr. McDANIEL. The screening procedures which we have put in place, if in existence at the time we implemented the Expanded East Coast Plan, would trigger an environmental assessment of the change before it was done.

Mr. MINETA. If you were to put in a southwestern plan, would you be subject to an environmental impact statement process or environmental impact assessment process?

Mr. McDANIEL. I couldn't answer that without looking at the degree to which that would shift traffic, but, yes, if it triggered a sharp rise in noise levels in communities surrounding the airport, it would subject us to an environmental assessment.

Mr. MINETA. Going back to the East Coast Plan, and I don't recall now all the details of it, what kind of sessions did you have with the airlines? Was that sort of a review in terms of "Well, here it is; thank you very much for your comments," or did you take—after, let's say, that kind of a briefing, did you do any kind of reevaluation of the implementation phases of the plan before it actually was put in Boston concrete somewhere?

Mr. McDANIEL. I'm not certain of the answer to that, Mr. Mineta.

Mr. MINETA. I ride in the jump seat of planes quite a bit, and frankly, the most common complaint I used to hear about, especially as it related to Newark, New Jersey, was the fact that planes 50, 60 miles out were already down at 5,000 or 6,000 feet, and, again, here you have a plane that's coming in—this is burning up fuel, as far as the captain is concerned—its spreading the noise of a plane that could be up a lot higher at that point, 40, 50, 60 miles away from its landing point, and yet it's already down that low, and I haven't heard a crew that goes into Newark that doesn't complain about that specific thing.

Again, I'm—are you a pilot, Mr. McDaniel?

Mr. MCDANIEL. I am not.

Mr. MINETA. And have you heard from the airlines in terms of what this means on fuel consumption or the drag coefficient or any of the other things that they might be concerned about other than the fact that—or let me ask, how closely are our air traffic controllers observing corridors of approach to airports—not necessarily just Newark—so that we don't have, let's say, a DC–10 that normally is at .822 following a DC-9 at .70, .72, and having to do this in order to make sure that they keep their proper distance?

I just don't understand where—or sometimes FAA likes to overcontrol planes, sometimes they don't. There's no consistency, and that's what bothers me, I guess, because it gets reflected to noise on the ground when they do these things.

Mr. MCDANIEL. The degree to which——

Mr. OBERSTAR. Mr. McDaniel, may I ask you to give a brief answer, as the gentleman's time has expired?

Mr. MINETA. I'm about to expire, so I'll yield back the time if you would go ahead and finish the answer.

Mr. MCDANIEL. Yes. The degree to which we can provide uniform control, we strive to do. We try to monitor controllers so that common speed is maintained and there is an even flow of traffic. That doesn't always happen, but that's our ideal. We're monitoring, in the case of the East Coast Plan, very carefully the compliance with the routes and procedures to see that we are in fact being faithful to what we have told the communities we are doing.

Mr. MINETA. One final comment, Mr. Chairman, and that is, Mr. McDaniel, there is no consistency. You go from end route center to end route center, and there is no consistency, and I hear that all the time.

Thank you very much, Mr. Chairman, for your patience.

Mr. OBERSTAR. All right. The gentleman's points are well made.

The gentlewoman from New York, Ms. Molinari.

Ms. MOLINARI. Thank you, Mr. Chairman.

Obviously, the East Coast Plan directly effects myself and those people that I've been privileged to serve in these past few short months. Please forgive, again, me belaboring a point that Mr. Mineta brought up, but, again, my tenure with this legislative body has been brief. Mr. McDaniel, were you or were you not subject to performing an environmental impact statement prior to the institution of the East Coast Plan?

Mr. MCDANIEL. We were not required to perform an environmental impact statement according to the procedures which had been adopted for compliance with the National Environmental Protection Act.

Ms. MOLINARI. Now, was that because it wasn't in place prior to it? If you were to perform an East Coast Plan now, would you be subject to an environmental impact statement?

Mr. MCDANIEL. The supplemental guidance which we have issued for changes above 3,000 feet, which did not, prior to that time, require an environmental impact statement, now say that if situations exist as they existed in the New York area we would in fact conduct an environmental assessment and look for options to what we were proposing, because it would trigger a reaction similar to what happened in New Jersey.

Ms. MOLINARI. And at what point in our time line were you then subject to performing an environmental assessment by the law?

Mr. MCDANIEL. For a change similar to the change that was made in 1987, we would as of the date that we issued the guidance, which was September 14th, have required some additional work to evaluate the impact of those changes.

Ms. MOLINARI. So then I'm a little confused as to when you went back in the collaboration with the Port Authority and made some major reroutes in January of this year why you were not subject to the performance of an environmental assessment.

Mr. MCDANIEL. The procedures which existed in January were the same as those which existed at the time the change was first made in 1987. We had not adopted our supplemental guidance at the time that we made a change in 1987.

Ms. MOLINARI. I'm sorry. Could you please speak in more layman's language? I'm not quite clear as to when an environmental impact statement or environmental assessment is triggered according to the answers that you've given here today.

Mr. MCDANIEL. The guidance which we issued on September 14th of this year would have required, in the case of the change that we originally made in 1987, would now require an environmental assessment to be conducted.

Ms. MOLINARI. So anything post September 14th of this year——

Mr. MCDANIEL. Of changes of the magnitude which were originally made in the East Coast Plan. Now, there are thousands of air traffic changes made in the system on an annual basis. Very few of those would trigger the environmental assessment process. Some of them would.

Ms. MOLINARI. How do you determine what triggers an environmental assessment process?

Mr. MCDANIEL. That's the guidance that we issued. It's designed to indicate that—any change in DNL level of more than five db would indicate that there is a need for an environmental assessment.

Ms. MOLINARI. Again, could you please put that in language that I can understand, Mr. McDaniel?

Mr. MCDANIEL. That's an increase in the noise level of people living around the airports more than five decibels on an annual weighted basis. If that increases more than five decibels, that would trigger the need for an environmental assessment.

Ms. MOLINARI. And I believe—and I will have for you and for this hearing on Thursday, the proper documentation—but I believe, according to New York City DEP, you in fact triggered that decibel level over the residents of Staten Island when the Port Authority rerouted some traffic by, I think, a 10-mile degree south from Newark Airport over New York. Those results were in fact achieved, and the residents are then asking me, according to their interpretation of your guidance, why in fact an environmental assessment has to date not been performed.

Mr. MCDANIEL. I'm not familiar with that situation, Ms. Molinari.

Ms. MOLINARI. What I would like to do—because I believe it's necessary for Congressional record, because despite the best cooperative methods employed by Mr. Peterson to come and lullaby my

constituents and myself, we've not achieved any satisfactory answer—I'd like to use this Congressional body to achieve that, and on Thursday we'll put forth those in the record, and for the record I would just like to state that it will be brought to your attention for a reply.

Mr. McDANIEL. We'll be happy to look at that.

Ms. MOLINARI. Thank you.

And just one final question with regard to the East Coast Plan, Mr. Chairman.

In response to the answer from my colleague, Mr. Lightfoot, you stated that the East Coast Plan was successful. Is that correct?

Mr. McDANIEL. That's correct.

Ms. MOLINARI. In achieving its goals, one of the goals being to mitigate delays.

Mr. McDANIEL. That's right.

Ms. MOLINARI. You then answered in your testimony that delays have cropped up again.

Mr. McDANIEL. That's correct.

Ms. MOLINARI. So where are we then with regard to the East Coast Plan? I mean, are we at the point now where we've exacerbated annoying more people for the same amount of delays?

Mr. McDANIEL. I don't know, Ms. Molinari, whether or not in fact we have annoyed more people. We have annoyed different people than were previously annoyed, and if you look at the plot of New York and the traffic, this is three days of air traffic——

Ms. MOLINARI. Well, I understand it's a very difficult area to regulate, but in one breath, again, I believe you said you've achieved the goals of rerouting airplanes to simplify patterns, and then in another breath you said that delays have crept up again, so I'm trying to determine then what benefits remain today for the East Coast Plan?

Mr. McDANIEL. We believe that the East Coast Plan had the impact desired. It reduced delays. There have been some changes subsequent to that time with regard to origin and destination of flights which have, we believe—this is in the en route system—caused those delays to creep back up again, but that delays are less than they would be if we had in place the original air traffic patterns of New York.

Now, there may be a need to look again because of changes in destinations that further delay reductions. We're not happy with the delay situation in New York, but we think that at the time it was imposed and at the present time, it is still beneficial with regard to the handling of air traffic.

Ms. MOLINARI. So then basically you've admitted to this Congressional body that the East Coast Plan has helped to stymie any delays; while the delays may have been the same prior to the East Coast Plan, the situation is so bad right now that the delays would have been even worse if we didn't have the East Coast Plan?

Mr. McDANIEL. I believe that's correct.

Ms. MOLINARI. So we still have some very significant problems with our air space situation in the New York/New Jersey region.

Mr. McDANIEL. More than a million flights a year—1.1 million flights a year—go into the New York airports. That's extremely difficult to manage, and it creates serious constraints on the system.

We have a very difficult time keeping the delays down. We continue to examine that, but, yes, New York is a key to the system, and we're concerned about the noise there.

Ms. MOLINARI. Sure, and I can appreciate that. I guess my final question, then, is—and I suppose this is an answer that's going to change every day—but in your testimony here today, we know that the demands on the system have increased; the noise levels have increased to communities; different communities are being affected; Stage 3 aircraft, while it may be better, won't solve the problem; and in fact, in your testimony you basically state that there won't be any problems solved with regard to noise, at least under the East Coast Plan in the near future. What is the ultimate solution, Mr. McDaniel? Where should we be heading as a Congressional body to one day resolve these problems?

Mr. MCDANIEL. I wish I had the crystal ball to tell you were you should be heading in order to resolve them. I think there will always be some complaints as a result of noise. One statement that you made regarding the noise getting worse I would not agree with. I think in fact noise has improved over time. Any time a community that has not previously received noise is exposed to it, I believe that that will generate complaints, even though more may benefit as a result of being relieved.

Ms. MOLINARI. Well, but there's increased traffic patterns in the East Coast, so therefore it's logical to conclude that if there's increased traffic, there has got to be increased noise problems all over.

Mr. MCDANIEL. Except the aircraft are getting significantly quieter. Each generation of aircraft from Stage 1 to Stage 2 to Stage 3 is an order of magnitude quieter than the one that it replaced, so the gains of people being relieved have been real and——

Ms. MOLINARI. So it's been kind of a net even effect.

Mr. MCDANIEL. Yes. What I think needs to be done more effectively, and I said this once or twice during the testimony, is we need to do on the land side as well as we have done with regard to the technology in the air. We need to find ways that airports and communities can protect what are really a vital scarce national resource—the airports of this country—from encroachment and being choked off on the ability to handle capacity and traffic.

Ms. MOLINARI. I would definitely agree; however, that is not a valid point with regard to the East Coast Plan, because, obviously, in just a few short years you rerouted major traffic around communities that have been there for at least the last 50 or 60 years. So the point is well taken in some areas but certainly not applicable to the East Coast Plan, I think you'd admit.

Mr. MCDANIEL. To some degree, although I would observe that some of the communities that complained most vociferously following the East Coast Plan are communities where the day/night noise level was in the order of 45 to 50. That is quieter than anyone in this room, I suspect, lives in in terms of a community. Those people are going to observe perhaps some flights, but it's impossible in any aviation system to respond to concerns at that kind of decibel level.

The percentage of people who complain are about 1 percent of the population highly annoyed, and there are communities in the

tens of millions throughout the United States that will live in such environs, and it's impossible in any quietness of the aircraft to satisfy those complaints.

Ms. MOLINARI. Well, I'm not sure if it's shame on the people who complain or it's shame on the tens of thousands who don't, but my time is limited, and I thank the Chairman for indulging me. Thank you, Mr. McDaniel.

Mr. OBERSTAR. Mr. McDaniel, I have a few other questions that I will submit in writing. They deal with the technology on noise abatement, the movement of people out of the noise impact zone under the Airport Improvement Program noise money provisions, and GAO's testimony about Stage 2 aircraft.

Thank you very much for your presentation this morning. Obviously, this is only the beginning of a very long process which we will walk together—you, the department, and us on the subcommittee.

Mr. MCDANIEL. We look forward to working with you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

[Mr. McDaniel's prepared statement appears on p. 679.]

Mr. OBERSTAR. Our next panel includes Mr. Robert J. Aaronson, President of the Air Transport Association, and Mr. Ed Driscoll, President, National Air Carrier Association.

Gentlemen, welcome. Thank you very much for being with us as we begin the dialogue on noise and aviation and the future of our air transportation system.

Mr. Aaronson.

TESTIMONY OF ROBERT J. AARONSON, PRESIDENT, AIR TRANSPORT ASSOCIATION, AND EDWARD W. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION

Mr. AARONSON. Thank you, Mr. Chairman.

With your permission, I'd like to summarize my statement and——

Mr. OBERSTAR. Please do, and your entire statement will appear on the record. You've submitted a very thorough and very thoughtful statement, and we appreciate that.

Mr. AARONSON. Thank you.

I'm Robert Aaronson, President of the Air Transport Association of America. I'm here today representing our airline members which collectively account for nearly 97 percent of the revenue passenger miles flown in the United States and over 95 percent of the freight ton miles.

The message which I bring to you on their behalf is simple and clear. It is imperative to the future viability of the Nation's air transportation system that the United States adopt a strong and sensible national noise policy. Such a policy must take into account both the public's demand for air transportation and the public's concern for environmental and quality of life issues, and it must balance these from a national perspective.

This national noise policy must provide once and for all a serious planning framework for all participants in, as well as the beneficiaries of, the National Air Transportation System. The policy must

provide communities with the necessary guidance to direct long range airport planning and development, and it must establish guidance about noise measurements, airport restrictions, the phase-out of the older and noisier Stage 2 aircraft, and legal remedies, including private right of action. Only a national policy will provide air carriers with a sufficiently predictable framework upon which to base their future aircraft acquisition plans.

The current confluence of events, including the call for passenger facility charges, presents what we believe may be a unique opportunity to fashion an effective noise policy. Let me explain where we believe the solution rests. Noise and related environmental concerns are without question the principal impediment to full utilization of existing airport capacity and the addition of new capacity. It is noise, not the unavailability of airport financing, that constrains airport capacity.

Airports seeking the addition of new capacity to meet passenger and cargo demand have confronted years of environmental objections, regulatory haggling and litigation. The absence of a national noise policy has effectively forced airports to implement their own solutions—that's restrictions—at the expense of the efficiency of our Nation's air transportation system. Collectively, the airports have now advanced the concept of local passenger facility charges as a source for capacity expansion. But money alone will not fix the airport capacity problem. Experience tells us that Government must simultaneously focus on the critical role of noise as an impediment to capacity, or we will see such expenditures fail to produce real airport capacity.

Mr. Chairman, you and your colleagues on the committee have devoted much energy this session to the cause of expansion of the National Aviation System. You have gone so far as to promote a charge on passengers, the passenger facility charge, as a source of funding for new capacity. I believe your leadership will all be for naught if Congress fails to also enact a noise policy in conjunction with this effort—a noise policy which protects industry investments in new aircraft in an effort to accommodate capacity needs and environmental concerns.

Following that thought, I'd like to turn now to the significant role of the airlines in the reduction of aircraft noise as part of a national noise policy. As of December 1989, the United States air carriers operated some 3,915 jet-powered aircraft, of which 41 percent met Stage 3 noise standards. Those Stage 3 aircraft in operation, along with orders in the pipeline, represent an investment by our members of over $175 billion in quiet technology.

Local communities should not be allowed to decide the rate of replacement of older, noisier aircraft in the fleet. These older aircraft, largely Boeing 727s, 737s, and Douglas DC–9s, continue to provide nearly 60 percent of our national air transportation services. Progress is being made to develop the technology necessary to quiet these aircraft to meet Stage 3 standards, either through retrofitting modifications to existing engines or through the actual reengining of the aircraft.

However, before determining whether to put $30 million to $140 million into a new aircraft or $8 million into a reengining or $3 million into a retrofit, carriers must know to a certainty how they

will be able to make that investment work. Bear in mind that all these Stage 3 costs must be financed by an industry devastated by recent fuel price escalation and a slack economy.

For example, the increased cost of fuel over the past eight weeks, if annualized, amounts to a $6.5 billion increase in airline operating costs, and the fuel crisis has hit us in a year when the industry is projected to lose $1.2 billion. Let me divert for a moment from the points covered in my prepared statement here to bring to your attention a related financial issue of the utmost concern to the airlines.

Even as we speak, the ongoing Federal budget deal anticipates adding some $12 billion or more to the industry's tax burden over just the next five years. This would occur through the combination of the 25 percent increase in the ticket tax, an increase of 1.25 percent in the cargo tax, a new tax on fuel, and a new user fee for USTTA. The risk of overburdening our industry with a disproportionate tax burden and fleet acquisition costs at a time when it is already struggling financially is both ominous and real.

All of these facts lead the industry to the inescapable conclusion that a national noise policy must be implemented along the following lines. Currently certified Stage 3 aircraft must be permanently protected from operating restrictions of any type. Any restrictions on Stage 2 aircraft should be reviewed and approved by the FAA to ensure safety, reasonableness, and consistency with national policy.

The Federal Government should develop a program to assure effective land use planning and controls around airports, taking into account local government prerogatives. Airports and communities sharing in the benefits of air transportation and availing themselves of Airport Improvement Program funds must conform to the National Noise Program. Affected parties must be granted the opportunity to protect their individual interests in the Noise Program in court.

Evaluation of airport development projects must include a weighing of the local, regional and State economics and employment interests against expression of community concerns with regard to noise. Finally, in consideration of the advisability of a phase-out date for Stage 2 aircraft, due regard must be given not only to noise and economics but also particularly to competition, small community air service, and air fares.

Mr. Chairman, the airlines appreciate your continued leadership on these issues of importance to the Nation's air transportation system, and I'll be very pleased to respond to any questions you and the members of the subcommittee have.

Mr. OBERSTAR. Thank you. I will have some questions, and before proceeding to Mr. Driscoll, I would like to ask you if you wouldn't be interested in at least theoretically amending your statement "If Congress fails to enact a national noise policy" to read "If Congress and the Administration."

Mr. AARONSON. Well, certainly, the Administration needs to provide leadership in concurrence——

Mr. OBERSTAR. We can't enact it alone.

Mr. AARONSON. But they are—yes. They have to agree to sign it, unless you're willing to override their position.

Mr. OBERSTAR. That's right.

Mr. AARONSON. I do understand that.

Mr. OBERSTAR. That's why my opening remarks this morning about the absence of the Secretary here. I think it's a significant gap.

Mr. AARONSON. We would like to have you put them to the test.

Mr. OBERSTAR. Mr. Driscoll.

Mr. DRISCOLL. We appreciate the opportunity to provide the views of the members of the National Air Carrier Association, and I would like to summarize for my statement and request that you make my full statement part of the record.

The issue of noise and access to airports are extremely important to the entire industry and especially the industry that I represent. My carriers engage in schedule and charter service in international and domestic. The majority of the carriers are substantial participants in the existing National Defense Program and provide substantial capability in support of the strategic air lift capability of the United States, as well as the domestic LOGAIR Program.

Desert Shield is an example, and it's interesting, Mr. Chairman, that the Stage 2 aircraft in the cargo mode were definitely required by the military, and these are the ones that have been operating through the United States for providing cargo lift, but they found again that they were extremely useful and beneficial because of the operating characteristics of those airplanes going into less than full status airports in Saudi Arabia and again points out the need that you just can't rule airplanes out because they are of a certain stage.

My carriers also operate a substantial number of Stage 3 aircraft, and I believe the percentage figure would be someplace around 60 percent of the aircraft operated by the NACA carriers meet Stage 2 and Stage 3 requirements. We recommend that there has to be and should be a national policy, a Federal mandate that not only provides the assurance to the industry that is necessary to enable them to properly guide their economic welfare, but also to know that once they have invested funds they're not going to be ruled out immediately by some other standard that would be established.

The Federal aviation noise policy should make it clear that all carriers will be treated equally and non-discriminatorily and that all airports will act on an equal and fair basis in a non-discriminatory manner. There are environmental considerations that naturally have to be taken into consideration, but yet the airlines must have the guidance of a Federal aviation policy so that they can properly stage their operations, know what their investments will be, and that they will not be ruled out overnight from operations.

There must be a national standard, and we believe that it is incumbent upon not only the Congress, but the Administration to achieve that. The national transportation policy that was recently issued by the Administration did little, if anything, to protect the air carrier industry, and I think it is drafted in such a way that it gave the airports the thought that they had a license to impose additional restrictions with the case of Los Angeles.

We have specific recommendations, Mr. Chairman, and I would like to read them. First, legislation should be enacted that establishes Stage 3 aircraft as the ultimate requirement on a priority

basis to ensure that Stage 3, however achieved, such as new aircraft, re-engined aircraft or hushkitted aircraft, are accepted without qualification by all airports on an equal and non-discriminatory basis. Such legislation should include a provision that preempts this area from exclusive Federal control so that States and all communities, without prior approval of the Federal Government, cannot enact restrictions inconsistent with the Federal mandate.

Second, legislation should provide for a phase-out of Stage 2 aircraft on an orderly and planned basis over a span of years—1991 to 2003—coupled with a non-addition rule and a non-new entrant rule. Foreign carrier treatment must be based on comity and reciprocity. Third, legislation should provide for a freeze on restrictions on the operation of Stage 2 aircraft pursuant to a Federal mandate implemented and enforced uniformly at all airports. A right of private action to enable a carrier to seek redress in the courts if airports adopt restrictions inconsistent with a Federal mandate should also be enacted.

Mr. Chairman, let me amplify on the provisions that we suggest. Stage 3 must be the ultimate requirement that can be imposed under the Federal mandate well into the 21st century, and such Federal mandate must preclude Federal airports from giving preference to any Stage 3 or Stage 4 aircraft that may become available during that time frame. In other words, Mr. Chairman, we must have stability with regard to stages of aircraft, as the air carrier industry cannot afford to re-equip its fleet or modify or re-engine aircraft at the whim of public or airports since such action would be detrimental to the development of the operation of a sound air carrier industry.

The recommendations for a non-addition rule and non-new entrant rule for Stage 2 aircraft during the phase-out period is essential, in our judgment, in order to restrict transfer of aircraft from one air carrier to another air carrier or to a new entrant, as that could circumvent or frustrate the phase-out.

In conclusion, Mr. Chairman, again, we emphasize in our judgment that legislation is essential, and it must govern not only noise, but the access to airports, and we trust that this committee will consider legislation at an early date. Thank you, Mr. Chairman. That concludes my statement. I will be pleased to respond to any questions the committee may have.

Mr. OBERSTAR. Thank you very much, Mr. Driscoll and Mr. Aaronson, both, for your observations, but more specifically for your very pointed recommendations for the elements of legislation that might constitute a national noise policy. Both of you have given us—I hesitate to say a road map—but at least a guidance on the direction that we might follow moving in that direction.

We'll continue to—I said earlier that we have to vacate by 11:30 for a Public Works Committee meeting here, but we'll continue until I have an indication that there are sufficient members here to proceed with the meeting.

Mr. Aaronson, particularly significant for our purposes is one of your observations on page 6, that carriers "must know to a certainty how they will be able to make that investment work," referring to investments for re-engining, hushkitting or buying new aircraft. I think that has to be a very fundamental part of a national noise

policy if that policy is going to deal with technology enhancements of existing aircraft to reduce noise.

Now, this committee is no stranger to that kind of request from the industry, and it's a fair one and a reasonable one. We went through that very same issue in the Clean Water Act beginning in 1972, when industries who were discharging into the Nation's waterways said, "We will clean up; we need to know how much, on what schedule, and that when we have made that investment the Federal Government will not come back to us a year later and say, 'That wasn't good enough, you have to do some more,' and we've already made the commitments, we've gone out on the marketplace and raised the dollars to make the changes. We can't do that again, and we have to know that this investment is going to stay in place for a period of time so we can amortize it and pay for it."

I think it's only reasonable, and the committee tried to accommodate those concerns, and I think that's a very important factor right now, you know, particularly in these perilous times when the price of fuel is skyrocketing out of control. Can you be a little more specific now about what kind of assurances—and both you and Mr. Driscoll, because I know it's a joint concern—time tables, assurances about levels of technology? If you would respond to that, and then we'll have to recess.

Mr. AARONSON. Mr. Chairman, first, the airline industry is totally committed to the concept of moving to an all Stage 3 fleet. As you were just commenting on my remarks, we just need assurance that that is a viable business commitment to make, and the kinds of things that are needed are not in the technology area. I think it's widely agreed that there is no technology beyond Stage 3 known or on the horizon, so we really just need to know what the ground rules are.

We all recognize that the aircraft manufacturers are turning out Stage 3 airplanes to meet airline orders at just about as fast a pace as they can. It's really a question as we get into the end of the decade and into the year 2000 and beyond of can the airline industry be expected to replace the entire fleet because it has the kinds of assurances that it will be able to fully use that fleet over the life of the investment? I think it's as simple as that.

Mr. OBERSTAR. Thank you.

Mr. Driscoll, would you want to respond further?

Mr. DRISCOLL. I think I was quite specific, Mr. Chairman. We share what Bob Aaronson has said here. We did give you a time table. We gave you through 2003, and that is based upon plans that are presently in effect by my member carriers.

Again, on the other side of the coin, if you look at the use of a DC–8 and a 707 aircraft, and, again, that was used in Desert Shield and is currently used, if there was no replacement aircraft of that type that would take and provide for Stage 3 on an economic basis, then I think we could agree that it should be for the useful life of the equipment, and that equipment may still be useful even beyond the year 2003. But we're willing to live with a 2003 time table.

Mr. OBERSTAR. In short, whatever is decided upon, you want firm, recognizable time tables that don't include slippage dates or changes at the whim of——

Mr. DRISCOLL. That's right. Like we had in the——

Mr. OBERSTAR [continuing]. Or local overrides.

Mr. DRISCOLL. Stage 1 to Stage 2, sir. You know what happened in that area, and there's where there was slippage. Carriers had invested huge sums of money only to find that the Stage 1 was extended for periods of time, in fact years, which impaired the financial investment that one of the operators had made in investing in actually Stage 3 aircraft.

Mr. OBERSTAR. Thank you. There will be a number of further questions that we'll have, but the subcommittee will have to recess at this point until, say, quarter to one for a meeting of the full public works and transportation committee.

The subcommittee stands in recess.

[Whereupon, at 11:37 a.m., the subcommittee recessed, to reconvene at 12:45 p.m., the same day.]

AFTERNOON SESSION

Mr. GEREN [assuming Chair]. The subcommittee will please come to order.

We're with the first panel, Mr. Aaronson and Mr. Driscoll.

Thank you for coming back and for indulging us with our little break.

Now I'd like to call on Mr. Clinger to see if he has any questions for the panel.

Mr. CLINGER. Gentlemen, I'm delighted to see you, and I apologize for not having been here during your testimony. I have a couple of questions to address to you. Are there instances today where local airport noise policy enactments have been so restrictive that it has actually constrained capacity to the point that business has been driven away to other airports or indeed to other modes of transportation? In other words, have we got actual examples where this has been so strict as to really affect scheduling and where traffic goes?

Mr. AARONSON. Mr. Clinger, I suspect that a response to your question really involves opinion as much as demonstrable fact, but certainly my view would be that primary examples would be Orange County and Long Beach in California. I don't really have any doubts that there would be more air service to more places absent the restrictions which those communities have elected to implement. I could probably supply you with several other examples if I took a little time to think about it and research it.

Mr. CLINGER. Mr. Driscoll.

Mr. DRISCOLL. I could add to that, if you will. San Francisco and their restriction on retrofitted aircraft that was certified by FAA to meet Stage 2, and those aircraft were prohibited from operating into San Francisco. That primarily affected Burlington, and that resulted in proceeding before the FAA, which still is not concluded because of the restriction adopted by San Francisco, as one concrete example.

Mr. CLINGER. We've had testimony here urging adoption of the elimination of Stage 2 aircraft totally by the year 2000. In other words, have only Stage 3 aircraft permissible in the fleets. Do you think that's feasible for U.S. carriers to meet that kind of a deadline? What kind of hardship would that work on your members?

Mr. AARONSON. Well, Mr. Clinger, I think the feasibility of it is significantly impacted by the short time remaining between now and that particular year of 2000. Looking at the degree to which the aircraft production capability between now and then is already spoken for—and I'm not saying it's 100 percent, but it's very substantial, as you know—and looking at the incredible financial burdens that the airline industry is increasingly facing—we talked about those this morning in the testimony—when you put those two factors together, I think that the year 2000 is probably too ambitious to expect that the entire industry could reach 100 percent Stage 3 by that date, but I don't think that it has to be too many years beyond that, provided the industry had the kind of assurances about its ability to use Stage 3 aircraft for their useful life that would justify the additional financial commitments, the investments that would have to be made.

Right now, as you know, the fleet is a little over 40 percent Stage 3, and so the thing that's really hanging in the balance and, in my view, awaiting a national noise policy is how much further will the carriers commit to go? From the standpoint of economics, they're going to do it on a total basis when they know what kind of ability they're going to have to recover that investment.

Mr. CLINGER. Are there any carriers that you know of that would literally financially not be able to convert and might be forced out of the business, which would reduce competitiveness in the field?

Mr. AARONSON. I think under today's conditions that there are probably few carriers that could convert to a 100 percent Stage 3 fleet by the year 2000. That's subject to change, obviously, but we seem to be heading into a period of increasing financial difficulty and increasing taxation, which further burdens the economics of air transportation. I'm not optimistic at all that there are very many carriers which could accomplish that kind of a time table.

Mr. DRISCOLL. Mr. Clinger, if I may, again, we take the position that there has to be a standard established, a Federally mandated aviation policy, that takes and makes Stage 3 aircraft the national standard for the foreseeable future into the 21st century. Having done that, then you could get into a phase-out, as Bob Aaronson has said, of Stage 2 aircraft.

Now, in my testimony I have given the period 1991 to 2003. That is the feel of my carriers. However, that's predicated upon having a firm policy on the Stage 3 and having a rational policy on the phase-out of Stage 2 so that a carrier who phases out Stage 2 aircraft doesn't meet another carrier, a new entrant or somebody else, coming in with a Stage 2 aircraft competing after he has made a substantial investment in Stage 3. That's why we get to the non-addition and non-new entrant rule as part of the phase-out of Stage 2 airplanes.

I have noted, in answer to a question from Mr. Oberstar, that the Stage 2 aircraft, primarily in the cargo area—the DC-8s and the 707s—are still an aircraft that has a useful life extending into the future. They are part of our national defense effort. They are presently flying in the Desert Shield operation, and the military has found them, and will so state, very useful. And for not only economic reasons, but national defense considerations, that aircraft should not be phased out except on a rational program that per-

mits a gradual change over to State 3, and it should be well beyond the 2000 year.

Mr. CLINGER. Just one other question. The opening panel of this series of hearings was a New Jersey delegation taking strong exception to the Expanded East Coast Plan, which the FAA has put into place, and there has been a lot of criticism of that plan.

What has been your experience, Mr. Aaronson, in terms of do you have any comments on how it's working out, whether it's as bad a proposition as apparently our colleagues in New Jersey seem to think it is?

Mr. AARONSON. Well, I think it's a bad proposition for all of us who are concerned about having a viable and successful national air transportation system. FAA has acknowledged, including in their testimony this morning, that some of the problems that were encountered with public reaction caught them by surprise. They've tried to remedy that after the fact. The airline has experienced exactly the same kind of problem with public unhappiness over what occurred there, so I think the bottom line is that all of us have been playing catch-up in trying to have an effective dialogue with the public and listen to their concerns and at the same time share with them what the real constraints are and what can be done to address them.

I don't have any specific suggestions beyond what's been done. I think one of the points that Mr. McDaniel touched on this morning, which is a particularly telling one, is that a number of the elected officials and the noise community spokesmen up there focused on the idea of routing traffic out over the ocean in a present military restricted area, and FAA found, and we agree with them, that what that would do is constrict capacity so that we would probably be all worse off than we were before the implementation of the plan. That represents an unacceptable cost in terms of maintaining our air transportation system.

So it's a very, very difficult situation, and clearly it's evidence that this whole industry has to learn from, that people who are not impacted by very much noise, if any, in terms of ambient noise levels in their communities, even though it may not seem in absolute numbers that they're going to be subjected to heavy noise resulting from a rerouting decision, they are going to react, and we all have to anticipate that and do a much better up-front communications job. That's the lesson of northern New Jersey.

Mr. CLINGER. Thank you, gentlemen, very much.

Mr. GEREN. Mr. Aaronson, you suggested the development of a Federal program to assure effective local land use planning and control around airports. Dallas-Ft. Worth Airport, which is contemplating an expansion right now, is certainly struggling with the lack thereof, in spite of the fact that they thought they had agreements about the land use planning around the airport. What recommendations would you make to the Federal Government for that sort of planning and implementation of that plan? What kind of teeth would you put in it to ensure that it's enforced?

Mr. AARONSON. This is something, as you probably recognize, that has been struggled with by the capacity and noise task force that's been at work for several years and is one of their recommendations which we embrace. It does present real difficulties, and the

only incentive that any of us who have been part of that process have been able to come up with is that the Federal Government has to be prepared to withhold various types of grant funds, if it has such a serious policy, from those communities that do not in a reasonable time frame respond to some Federal guideline.

And that doesn't have to be limited to Federal grant funds for air transportation. It might touch on highway funds or other kinds of funds that are of interest to the States and the localities, and they might either take a proportionate penalty for not doing adequate land use control around airports or perhaps 100 percent penalty. That is a policy problem, I think.

Mr. GEREN. Thank you.

Mr. Driscoll, you stated that in a national noise policy it should be clear that all carriers should be treated on an equal and nondiscriminatory basis, and you go on to say that this is provided for in the Federal Aviation Act. Is there any discrimination going on now in violation of the Act, and could you describe what you mean by discrimination?

Mr. DRISCOLL. The case in point was under the high density rule. For about 20-some years, the charter air carriers were treated as air carriers by the scheduling committees and by the Government in administering that program. However, when they amended the noise rule when Elizabeth Dole was Transportation Secretary, the words appeared to say the same, but all of a sudden the charter carriers found they had to file suit to obtain their air carrier status back again. It had been taken away from them by interpretation.

Rather than go to trial, the FAA settled the case and accorded us, at that point, equal treatment. There are probably other cases, but that's the one in point that stands out, that where the words "air carrier" were used in the rule, charter air carriers were considered not to be air carriers by interpretation.

Mr. GEREN. All right. Thank you. I have no further questions.

I certainly want to thank both of you for your testimony—oh, excuse me.

I beg your pardon. Do you have any questions for the panel?

Mr. PACKARD. Yes, I'd just like to ask—and I'm sorry I wasn't able to attend all of your testimony—do you believe that the Federal Government ought to take the lead in developing a national noise plan or noise abatement plan, and if so, how does that track with the local concerns in terms of local jurisdiction, et cetera, and local authority, and should the Federal Government preempt local authority—and there's a very strong feeling at the local level in this area—and is the local government doing an adequate job of addressing noise problems?

Mr. DRISCOLL. I would address that, sir, on this basis, that with the number of restrictions that are being adopted locally, you could have a patchwork across the United States of varying rules and regulations governing access to airports. There definitely needs to be a national standard, and the Federal Government, including the Congress of these United States, supported by the Administration, should adopt a Federal standard and establish it, taking into consideration, however, the environmental factors as well as the local concerns.

However, an overriding policy must address that interstate commerce is involved, national defense is involved, we need a sound air transportation system, we need a system that can traverse the United States without having to select airports that you can serve because others have ruled you out.

Mr. AARONSON. Mr. Packard, I'd just add to Ed Driscoll's comments that having this national standard, which the Air Transport Association advocates just as strongly as Ed did just now, doesn't preclude local restrictions of some types that are deemed appropriate within the frame work of that national policy. So there may be room for both levels of government to function as long as we maintain that essential national perspective which we are rapidly losing, and we are losing the National Air Transportation System that this country has and relies so heavily upon.

Mr. PACKARD. Thank you, Mr. Chairman.

Mr. GEREN. There are no further questions. Mr. Aaronson and Mr. Driscoll, thank you very much for your testimony today.

[Mr. Aaronson's prepared statement appears on p. 619.]

[Mr. Driscoll's prepared statement appears on p. 643.]

Mr. GEREN. I now would like to call the next panel, which will be a departure from the published schedule; Mr. George F. Doughty, Mr. James P. Muldoon, and Mr. Thomas E. Holloran.

Gentlemen, I want to welcome all of you and thank you for being here. Your full written statement will be included as a part of the record, and I ask each of you to summarize your statement for the committee today. I don't have any preference as to how you should proceed, and you can go forward in whatever order you choose.

TESTIMONY OF GEORGE F. DOUGHTY, DIRECTOR, DENVER STAPLETON INTERNATIONAL AIRPORT; JAMES P. MULDOON, MANAGER, AVIATION TECHNICAL SERVICES, PORT AUTHORITY OF NEW YORK AND NEW JERSEY; AND THOMAS E. HOLLORAN, CHAIRMAN, MINNEAPOLIS/ST. PAUL METROPOLITAN AIRPORTS COMMISSION

Mr. HOLLORAN. Mr. Chairman, members of the committee, I am Thomas Holloran of the Minneapolis/St. Paul Metropolitan Airports Commission, which I'll call MAC here, and a professor in the Graduate School of Business at the University of St. Thomas in St. Paul.

The Commission, created by the State of Minnesota, operates the Minneapolis/St. Paul International Airport that serves the needs of the entire upper Midwest region. The Commission also owns a system of six general aviation reliever airports that serve the Twin Cities area and reduce congestion at MSP. MSP serves nearly 19 million passengers annually.

We commend the subcommittee for its forthright and constructive action in developing H.R. 5170. Now, some who want to establish a national noise policy are concerned with the Federal Government's existing policy because they claim it has allowed airport proprietors to impose too many or too harsh site specific limitations on the operations of noisy aircraft. MAC is well aware that inappropriate and uncoordinated noise restrictions at local airports could create a patchwork quilt of regulations.

We agree, however, with the DOT and the GAO that this problem has not had a serious adverse effect upon the operation of the National Air Transportation System. We feel that there are sufficient controls currently in place to avoid such interference. MAC has been in a leadership position within the aviation industry for more than two decades in a continuing effort to balance the need to enhance the capacity of MSP while reducing the impacts of aircraft noise on area citizens as much as possible.

Developing a community aviation advisory committee to jointly work out noise abatement solutions, installing a 27-point noise abatement program, devising a noise budget voluntary agreement between the airport and airlines which has resulted in a more than 20 percent decrease in average daily noise energy from 1986 highs, and negotiating a precedent-setting differential landing fee agreement with user airlines to assist in funding off-airport noise abatement and soundproofing programs are only the highlights of the many attempts we have made to balance the air transportation services and the environmental protection elements of our statutory charge. MAC is convinced that negotiating with carriers for voluntary responses rather than unilaterally adopting ordinances and regulations results in greater noise reduction as well as reduced likelihood of litigation.

We have not solved all of our noise problems; far from it. In fact, GAO's report to you last year indicates that although MAC has undertaken more and a greater variety of noise mitigation actions than any of the other seven airports analyzed in that study, this has not always been recognized by our residential neighbors. While our noise impacted population is far less than that of Chicago, Atlanta, Los Angeles, and Memphis airports considered in the GAO study, the number of noise complaints received at MSP in 1988, which was in excess of 27,000, were higher than all of the other airports' complaints when added together.

Late evening and early morning activity has recently increased at our airport, which has doubled our Ldn 65 exposure area to 41,000 residents. Although this makes additional dwellings eligible for sound insulation treatment, it also increases pressure for enacting night time noise restrictions. A local community/government/industry working group has been attempting to reach consensus—I'm convinced they will—on better utilization of Stage 3 aircraft at MSP, including the long term phase-out of noisier Stage 2 aircraft and some means to restrict night time activity.

As you know, the airlines have proposed that DOT be allowed to review and nullify any noise restrictions that have been or will be adapted by airport proprietors on Stage 2 and Stage 3 operations and which are administratively determined to be objectionable. Under this scenario, DOT could overrule a local noise abatement action, even if the questioned restriction satisfied the legal criteria historically applied by Federal courts.

Too little attention, we believe, has been given—too much attention, we believe, has been given to the shift in financial liability for takings involved by the Federal Government's preemptive actions over local noise rules. We believe that too little attention has been focused on the implications of granting DOT administrative power to disapprove and nullify local noise restrictions.

Because the State or local governmental airport sponsor no longer would ultimately control noise impacts around its airport, the Federal Government itself would have to address and resolve most of the local noise disputes now being mediated by the local airport sponsor. Community residents, we believe, would ask individual Senators and Congressmen directly to intercede with FAA to retain local rules. We question whether the Congress and the FAA want to take over those responsibilities.

Clearly there is no single, simple, quick-fix solution to the noise problem. There is no universal set of rules that can possibly apply to the many different airport situations that exist in the United States today. Yet there must be a national aircraft noise policy. The Federal Government must show leadership in developing that policy, but hopefully it will result in a program of partnership and cooperation between the airport sponsors, communities, DOT, FAA, and the airlines.

There are two areas, we believe, where the Federal Government should lead the way. MAC agrees with the positions of the airlines, aircraft manufacturers and airport sponsors that it would be most constructive and appropriate for the Federal Government to set a mandatory phase-out deadline for Stage 2 aircraft operations at U.S. airports. A Federal program would be preferable to a succession of local actions, although specific airports with serious noise problems must be allowed to set whatever tighter schedules can be reasonably justified.

MAC understands that carriers must have adequate profits to enable them to buy or lease quieter aircraft and that such profits are hard to achieve in today's market conditions. On the other hand, we feel FAA should not delay but should set a Stage 2 phase-out schedule that is mindful of the marketplace pressures and yet achieves fleet modernization at the earliest practicable date. Failure to set such a standard will allow continued financial leverage by airlines directed toward change of ownership rather than use of available borrowing power for acquisition of quieter and more modern fleets.

Also, European countries may soon require the phasing out of Stage 2 aircraft at their airports. There is a real possibility that noise around U.S. airports will be increased during the next decade by U.S. airline purchases of Stage 2 aircraft from Europe. Preventing such increases in noise exposure from foreign-based sources is a highly appropriate role for the U.S. Government.

Mr. Chairman, MAC has fully supported H.R. 5170 that your Senate counterpart has introduced. Any legislation containing an authorization for PFCs is a pleasant surprise. However, we are seriously concerned that the noise policy provisions in S. 3094, if sent in their present form to conference, with H.R. 5170 could result in final legislation that could neutralize all of the beneficial elements of your legislation. The provisions of the Senate bill hold out the tempting morsel of having the Federal Government assume financial liability for takings.

The issue, we believe, involves more than takings. There is also the political accountability, there are defense costs for other lawsuits related to noise. At MSP, MAC has spent millions of dollars over the past 20 years on noise-related litigation and problem solv-

ing other than for takings. The Federal Government cannot take just part of the liability, and taking all of it may be more than it wants to chew.

In conclusion, the Senate bill would immediately limit by statute the actions airports could take to attempt to control noise while holding out the possibility of a Stage 2 phase-out date and the promise of Federal assumption of liability. It contains the enticing potential of allowing airports to levy passenger facility charges, but only if the airport abandons unapproved noise restrictions presently in place or contemplated in the future.

It is critically important to us that MAC not lose its ability to mediate its local noise problems unless the Federal Government takes over that responsibility, both completely and competently. If noise issues are not handled extremely well, MAC may lose the ability to convince our constituents in the surrounding governmental units that additional airport capacity not only will be needed but approved by them.

The problem of capacity enhancement will not be solved until and unless the noise problem is adequately dealt with. The capacity problem will be greatly exacerbated if airport proprietors lose their ability to participate in controlling local noise problems. Thank you.

Mr. GEREN. Thank you, Mr. Holloran.

Now I'd like to call Mr. Muldoon.

Mr. MULDOON. Good afternoon. My name is James Muldoon, and I am General Manager of Aviation Technical Services for the Port Authority of New York and New Jersey. The Port Authority appreciates this opportunity to appear before the subcommittee and to express our views on the pressing need to establish a national program to phase out noisy Stage 2 aircraft, thereby reducing the impact of aircraft operations on communities near the Nation's major airports.

The Port Authority is responsible for operating the New York/New Jersey metropolitan areas' three major airports. These include John F. Kennedy, Newark International and La Guardia Airports. Last year our three airports served over 74 million air passengers, almost 22 million of which were traveling to or from overseas destinations. These passengers represented 5.5 percent of the total United States domestic and 28 percent of the total U.S. overseas traffic. Our airports are served by 100 U.S. and foreign flag carriers providing service to 150 cities, with a total of 15,000 nonstop flights per week.

Unfortunately, the statistics as far as aircraft noise impact is concerned are equally impressive. An analysis produced by the FAA in the late 1970s indicated that aircraft operations at our three airports affected over two million people, roughly one-third of the noise impacted population in the United States at that time. Since then, the number of people living within noise impact contours at our airports has been reduced by 1.5 million, primarily through the elimination of the noisiest non-certified Stage 1 aircraft. We estimate, however, that the 630,000 people still living in communities around our airports within the noise impact contours continue to represent one-third of the total noise impacted population in the United States.

Aircraft noise is now recognized by virtually all observers as the single most critical impediment to the expansion of the air transportation system. Community reaction to aircraft noise prevents the establishment of more efficient flight paths, the expansion of airports and the development of new airports, without which the system will soon run out of capacity and projected demand will not be realized.

In addition, the noise problem is no longer confined to the areas immediately adjacent to major airports but is now generating community opposition in areas many miles from the airport. This can be seen in locations in northern New Jersey and in Seattle, where air route changes have exposed distant communities to new or significantly increased frequency of aircraft overflight.

The Port Authority has long been a leader in the fight against aircraft noise, beginning in the early 1960s with our establishment of a single event noise limit and going right through the 1980s with our cumulative noise rule mandating the early phase-out of Stage 1 aircraft at our airports. Just recently, we established a night time noise rule prohibiting the addition of Stage 2 aircraft during the noise sensitive night time hours.

Although the Port Authority and other airports have had varying degrees of success in reducing the impact of aircraft noise on surrounding communities with a variety of local measures, the only truly satisfactory solution to the aircraft noise problem is source noise control—that is, reducing the noise generated by individual aircraft operations to the extent technically and economically practical.

Aircraft and engine technology has improved greatly from the introduction of the first jet transports in the late 1950s. Aircraft being produced today are significantly quieter and far more fuel efficient than their predecessors. As the subcommittee is aware, the first generation of jet aircraft which were produced without a requirement to meet any noise certification standards, and which are referred to as Stage 1 aircraft, were phased out of the civil fleet based on the requirements of the Aviation Safety and Noise Abatement Act of 1979. The ensuing Federal regulations established a phase-out schedule that ended the operation of virtually all of these aircraft in the United States on January 1, 1985.

However, the next generation of aircraft, which were manufactured to meet minimum noise certification standards, referred to as Stage 2 aircraft, continue to operate in the United States without any phase-out schedule. These, of course, include the Boeing 727, the DC-9, and early versions of the 737.

Based upon the Federal Aviation Administration's report to Congress in August 1989, the total United States Stage 2 fleet represents approximately 2,300 aircraft as of August of 1989. In review of virtually all industry observers, as well as community representatives concerned with aircraft noise, these unregulated aircraft represent the most critical aspect of the noise problem in the United States.

At this point, the difference between the U.S. and the Western European treatment of these aircraft must be noted. Effective next month, Stage 2 aircraft cannot be added to the registry of any of the Council of European Communities member States. They can,

however, be exported to the United States and, without restriction, added to the fleet of U.S. airlines. In addition, as we speak, the European Parliament has under consideration a recommendation that would ban the operation of any of these aircraft more than 25 years old in 1995 and ban the operation of all such aircraft, regardless of age, in the year 2002.

With the non-registration rule already in place and the operational ban or a variation thereof soon to be imposed, the U.S., Eastern Europe, and a group of Third World nations will be the only areas which will permit the registration, and eventually the operation, of these aircraft.

The latest generation of aircraft, referred to as Stage 3, are for the most part powered by high bypass engines and are far quieter and more fuel efficient than their predecessors. There are presently about 1,600 of these aircraft in the U.S. registry with an additional 1,100 on order by U.S. airlines. These aircraft, supplemented by hushkit versions of a number of recently manufactured Stage 2 aircraft, can well satisfy all of the need for civil aviation without the retention of older Stage 2 aircraft.

The retirement of Stage 2 aircraft from the United States fleet or their upgrading to meet Stage 3 standards will, in our view, have a significant impact on mitigating the blight of aircraft noise on communities surrounding major U.S. airports. Although the national transportation policy issued earlier this year stated that it is the Federal policy to facilitate the orderly and expeditious phase-out of Stage 2 commercial aircraft without the use of Federal funds, the FAA has failed as yet to propose a phase-out schedule.

It is our recommendation that Congress take the initiative and mandate the phase-out of Stage 2 aircraft from the United States' fleet in an orderly manner, with a total ban on the operation of these aircraft effective December 31, 1999. I might also note that the Airport Operators Council International has also called for the banning of Stage 2 aircraft effective that date.

The failure to quickly establish a phase-out program will have the undesirable consequence from a national perspective of leading to the dumping of aircraft unable to be registered or to operate in Europe into the United States registry. Furthermore, individual operators such as the Port Authority will have no choice but to expand existing local noise regulations.

As you know, Senators Bradley and Lautenberg have called for the enactment of a national noise policy and a Stage 2 phase-out program, which our chairman, Richard Leone, has publicly supported. Moreover, the Senators specifically have called on the Port Authority to take a proactive stance on the policy and the phase-out. This we have said we will do. Our Board of Commissioners has directed staff to evaluate the economic feasibility of a local rule that would phase these aircraft out of operation on our airports with or without a national rule.

We expect, after receiving public input, to present a specific recommendation to our Board by the end of the year. In this regard, we wish to note that since to a certain extent the noise problems of every airport are unique, it is important for Congress, in adopting a national phase-out program, to continue as it has done in the previous Federal airport noise legislation—to carefully preserve local

proprietors' rights to enact reasonable, non-discriminatory noise regulations which respond to legitimate community concerns and to protect airports against liability for noise damages.

Again, thank you for this opportunity to present our views on this critical issue, and I'll be pleased to answer questions of the subcommittee.

Mr. GEREN. Thank you, Mr. Muldoon.

Now I'd like to call Mr. Doughty.

Mr. DOUGHTY. Mr. Chairman and members of the subcommittee, I am George Doughty, Director of Aviation for the city and county of Denver, Colorado.

As you know, Denver owns and operates Stapleton International Airport, which has served the airport needs of the metropolitan Denver area and the Rocky Mountain region since 1929. The city is also constructing the new Denver International Airport, which will open in October of 1993. I appreciate the opportunity to testify on essential elements of a national aircraft noise abatement policy and to offer Denver's perspective on the overall relationship between local aircraft noise restrictions and airport capacity.

First, Mr. Chairman, I would like to thank you and the subcommittee for the support you have given the new Denver International Airport project. I am pleased to report that the new airport is ahead of schedule and that construction bids to date are 17 percent under budget. Construction began last Fall, almost exactly a year ago, and about 22 million cubic yards of earth have already been moved on the project. The construction of the terminal building foundations will begin before year's end.

In addition to AIP funds received, to date $700 million in long term bonds have been issued and an additional $200 million in variable rate bonds will be issued in the near future.

On this very important of a national noise policy, you have heard the airlines' unsubstantiated arguments that the patchwork quilt of local noise restrictions is a major impediment to increasing airport and airway capacity. The airlines' assertion raises the central question in the current aircraft noise abatement policy debate—does an airport proprietor's right under existing law to impose restrictions on the use of its runways by noisy aircraft shrink airport capacity or enable airport capacity to be increased?

Based on its experience, Denver is convinced that the local proprietor's retention and exercise of its current legal ability to shape the noise contours around its airport by setting local limits on aircraft operations is the only way that major increases in airport capacity will ever be approved.

Under our multi-level system of Government, the new runways are proposed and approved and constructed as voluntary acts of local airport operators. As a practical matter, local approval occurs only when a proposed runway is politically acceptable to the communities having jurisdiction over the surrounding land. The Federal Government can't mandate new runways on locally-owned civil airports as it can on military bases. State and local government and airport operators retain authority under the Federal system.

Traditionally, the airlines' proposed solution to their alleged aircraft scheduling problem has been to ask Congress to change the law so FAA will overrule local proprietors' decisions restricting air-

craft operating hours or establishing noise limits on aircraft types or fleets. In Denver's view, that's one sure-fire way to stop new capacity, since communities to be affected won't allow new runways to be approved and constructed without years of wrangling and legal proceedings if noise relief cannot be achieved.

Now some airlines are even asking Congress to prohibit the airport operators from generating funding for new capacity through the passenger facility charge mechanisms unless that sponsor agrees not to shape its airport noise contours to community acceptability. Mr. Chairman, that's two sure-fire ways to stop new airport capacity, continue to restrict local funding and prevent the development of a local consensus on new runways and new airports. We are disappointed that Senator Ford's recently introduced legislation reflects this approach.

Denver's success in getting new airport capacity approved reflects a much different approach. Substantial additional airport capacity for Denver and the Rocky Mountain region was made possible only because of voluntary intergovernmental agreements entered into between Denver and its neighboring jurisdictions. The negotiated agreements allowed some short term increases in Stapleton capacity if noise restrictions were adopted. Denver has in effect today a noise budget program that allocates a finite amount of noise-making rights to serving airlines. The airlines decide without Denver's interference how to use their noise allocations.

Adams County approved Denver's annexation of some 45 square miles of land for the new airport, provided that Denver would control noise impacts on the area. For its part, Denver negotiated adequate land for its new airport, an area larger than the Dallas-Ft. Worth and the Chicago O'Hare Airports combined and required that additional noise buffer zones surround the new airport. Neighboring Adams County agreed to plan and zone adjacent land to help assure future compatibility.

Mr. Chairman, Denver contractually shared its existing proprietary powers for shaping aircraft noise impacts with adjacent Adams County in order to achieve a new airport. If Congress attempts to limit airport proprietors' powers to mitigate noise, as the airlines propose, other communities needing new runways or new airports in the future may no longer be able to satisfy adjoining communities' conditions for protection of the environment.

In summary, Mr. Chairman, the attempt to force airport development on adjoining communities without their concurrence and participation won't serve anybody's purposes over the long run. It creates winners and losers when only a win-win negotiation between airport proprietors and the neighboring communities will result in airport capacity being increased. The real solution to today's aircraft noise problem, in Denver's view, is for Congress and the Executive Branch to continue pressures on the airlines to expedite their transition to an all Stage 3 fleet of quieter aircraft. While the Stage 3 fleet will not solve every noise or capacity problem, it will provide the most significant improvement and will open more environmentally and politically acceptable options for increased capacity.

Finally, Mr. Chairman, pejorative terms like "patchwork quilt" and "hodge-podge" may sound good on the front page of USA

Today, but have local rules really burdened airline operations and significantly restricted capacity? I do not believe such conditions have been demonstrated by the testimony presented to the subcommittee. The airlines should be required to prove their claim if such a major change is to be made in the traditional governmental relationships that have produced the finest system of aviation facilities in the world.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

Mr. GEREN. Thank you, Mr. Doughty.

This panel has airports in three stages of development—New York and New Jersey, whose airports are already in a highly congested region of the country; Denver, which is in the early phases of major new construction in a sparsely populated area; and Minneapolis/St. Paul, which is looking at the possibility of a new site sometime in the future.

To Mr. Doughty, for Denver, what agreements are you reaching or have you reached with the community to protect the growth potential that you've built into the airport?

Mr. DOUGHTY. Mr. Chairman, as I mentioned in my testimony, we have in place an intergovernmental agreement with Adams County, which is the jurisdiction that essentially surrounds—other than Denver—surrounds the site of the new airport. We are acquiring 53 square miles of land, which will allow us to own land two miles off the ends of all the runways at the airport. In addition, Adams County is required to zone 65 Ldn noise area, noise contour, for other than residential development.

Denver also has the authority under the agreement to purchase from the land owners, which essentially today are agricultural operations, the rights to develop residential uses and other incompatible land uses around the airport in the 65 Ldn and even as far as the 60 Ldn, if Denver chose to go to that extent. We have nearly completed the land acquisition and will within the next few months begin to look at our acquisition of residential development rights.

Mr. GEREN. Thank you.

Mr. Holloran, have you considered this problem? If MSP were to decide to build a new airport, how would you handle the growth that would surely follow it?

Mr. HOLLORAN. We have watched carefully what Denver has done. We believe that Denver presents an outstanding case study in how to develop a new airport. We are mandated by our legislature to follow a two-track approach. One track is to look at our current airport, determine what its capacity will be for the next 30 years, what will have to be done to it, what the environmental impact will be, and how much it will cost; at the same time, to work with another governmental agency to site plan cost, an alternative site, with our legislature to make the decision in 1996.

Our concept of adequate protection is similar to Denver's—that is, owning adequate land. We have found that if we don't own the land, surrounding municipalities, regardless of overflights, will permit residential housing right to the edge of airports.

Mr. GEREN. Mr. Muldoon, did the airports in your area at one time have any agreements with the community?

Mr. MULDOON. No. The airports were originally owned by the cities of New York and Elizabeth and were taken over by the Port Authority in the late 1940s. It's popular in some aviation circles to allege that the growth around the airport has created the noise problem. That's really not the case. In our area, the growth around the airport was fairly well established and has not changed significantly.

Mr. GEREN. Many witnesses have talked about and recommended a stronger Federal role to ensure compatible land uses around airports. I'd like each of you to respond to this. What are your opinions about this approach to the noise problem?

Mr. MULDOON. Well, in a mature area such as ours, you're basically stuck with the land uses you have. Flight paths have been devised to try to avoid the residential areas to the extent that they can at low altitudes, but it's simply too late for compatible land use planning in areas such as ours or Boston's. It sounds eminently reasonable in areas such as Denver, where that option is still on the table.

Mr. GEREN. Mr. Doughty, in Denver, I guess you all have taken these steps without the Federal Government having to play a part in the——

Mr. DOUGHTY. Well, I think the process we went through working with the airlines and the FAA in the development of plans for the new airport, there's recognition on all sides of the need for sharing future compatible land uses, and the environmental impact statement, of course, which is in place with regard to the new Denver airport, deals with these issues, and I believe that the FAA has adequate authority within the AIP Program to continue to require for new developments at airports compatible land use planning and control of development around the airport.

Mr. GEREN. Without any new authority?

Mr. DOUGHTY. I believe they do, yes, without any additional authority.

Mr. GEREN. Mr. Holloran, would you like to add anything?

Mr. HOLLORAN. Yes, I would. I believe I might differ slightly. We would welcome the utilization of Federal authority, particularly in requiring a phase-out date for Stage 2 and the reimportation of Stage 2 aircraft. In addition, we would be comfortable with some minimum standards in a Federal noise policy, but we strongly believe that there needs to be a local partnership.

I've heard today expressed the attitude that things will be substantially better if we had an all Stage 3 fleet. In my community, it's my belief that a Stage 3 aircraft over someone's house at midnight is of greater concern than a Stage 2 aircraft over that same house at noon, so I believe that there must be something beyond Federal standards, and that is local participation.

Mr. GEREN. Thank you. I have no further questions. I want to certainly thank the panel on behalf of the committee. We appreciate your testimony that you've submitted to the committee in written form and your testimony today. Thank you for venturing all the way over here to this end of the country. We appreciate your being with us today.

[Mr. Holloran's prepared statement appears on p. 651]
[Mr. Muldoon's prepared statement appears on p. 687.]

[Mr. Doughty's prepared statement appears on p. 633.]

Mr. GEREN. Now I'd like to call on Mr. George P. Howard and Mr. Charles M. Barclay.

Mr. Barclay, Mr. Howard, your full written statement will be included as part of the record, and I ask that each of you summarize your statement orally. Thank you very much for being here today. I welcome each of you, and you can proceed in whatever order you choose between yourselves.

TESTIMONY OF GEORGE P. HOWARD, PRESIDENT, AIRPORT OPERATORS COUNCIL INTERNATIONAL, AND CHARLES M. BARCLAY, EXECUTIVE VICE PRESIDENT, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

Mr. HOWARD. Thank you, Mr. Chairman.

I'm George Howard, President of Airport Operators Council International. Airports have to be good neighbors, and they must take steps to mitigate the impacts of noise where and when this is possible. Such actions are in our self-interest, because we need public support if we are going to be able to build and expand our facilities to meet the growing demand for them. Increasing airport capacity is crucial to reducing delays and increasing competition.

On that score, Mr. Chairman, I'd like to take this opportunity to thank the committee for its tenacious efforts which resulted in the House passing PFC legislation. Many of the important projects that need to be funded by PFCs will involve noise mitigation, which will serve to increase airport capacity and efficiency. However, we also need Federal leadership and a national noise policy.

AOCI's position on noise has been consistent. In March of last year, we submitted our views in response to FAA's request for comments on aircraft fleet modernization. In it, we stated that airport proprietors, faced with the legal consequences of airport noise, have the right on behalf of their community to develop noise abatement plans for areas within the proprietors' authority.

Regarding the phase-out of Stage 2 aircraft, we urge the immediate establishment of a U.S. Federal program to establish a cut-off as of the end of the year for final registration or importation of Stage 2 aircraft into the United States and establish a phase-out schedule and final cut-off date for operation of all Stage 2 aircraft of no later than December 31, 1999, and require each air carrier to submit a phase-out schedule for its fleet to FAA by December 31, 1992, with the appropriate review and comment by the general public.

Our Board of Directors reviewed this policy in June and reaffirmed it. We apprised Secretary Skinner of our views by letter on July 19th. This is still the policy AOCI would like to see adopted, yet we recognize that there are other segments of the industry whose views deserve to be considered in the development of a national policy. To that end, AOCI has participated in government/industry task forces that have focused on solutions to the aviation noise problem.

As you know, the Noise Working Group of the Industry Task Force on Airport Capacity and Delay labored hard for two years and, in 1989, recommended an approach referred to as the "three-

legged stool," combining a Stage 2 phase-out by the end of 1999, a ban on new local noise rules coupled with Federal assumption of noise liability, and a strong land use planning program to protect against incompatible development. This approach was not adopted by the Federal Government at the time, and the national transportation policy stated explicitly that it is Federal transportation policy to facilitate the orderly and expeditious phase-out of Stage 2 without the use of Federal funds. However, it did not flesh out this broad policy with a specific proposal or time frame.

In a further effort to reach industry consensus on noise, the Aviation System Capacity Task Force set up a Noise Working Group chaired by Charles Bautz of Delta Airlines. Building on this working group's foundation, the full task force, on August 22nd, reached agreement on a set of principles and achieved broad consensus on a series of specific recommendations. These principles, which represent a compromise on the part of all parties, include the following.

One, a national Stage 2 phase-out date at 2003, with airports having the option of imposing an earlier phase-out as of the year 2000; two, a Federal review and approval process of all proposed new local restrictions on Stage 3 aircraft, with the Federal Government assuming liability for noise damages arising from an airport's inability to impose a restriction disapproved by DOT; three, a non-addition rule that permits certain Stage 2 aircraft to be imported into the United States and requires their early modification to achieve State 3 status; and finally, four, establishment of locally-controlled compatible land use programs, with appropriate incentives to encourage fulfillment of those programs.

At the time of the August 22nd meeting, it was made clear that not every airline would support this approach, just as not every airport would support it. However, it is as close to an industry consensus as we have been able to achieve after years of wrestling with the problem. Since the meeting, Chairman Bautz has reported that certain airline members, including some represented at the meeting, are now expressing concern with certain aspects of this agreement.

AOCI is not backing away from the consensus the task force reached at the meeting. We are committed to it as a reasonable compromise, sound public policy, which takes into account the interests of all parties. I should emphasize that not all of our airport members agree to this, even as a compromise. On the whole, however, we believe that we can support it as part of an effort to get a national noise policy into place.

You will note that it deviates substantially from our preferred position, and we believe we have made significant compromises in a number of areas. The deadline for a national phase-out has slipped four years, from December 31, 1999, to December 31, 2003, although individual airports who need it would have a federally-protected option to impose an earlier deadline. This will shift some of the heat to local airports, who have to take the initiative to act before the Federal Government deadline kicks in.

AOCI has agreed to the concept of a federal review and approval of all new local restrictions on Stage 3 aircraft, as long as the Federal Government assumes liability for damages resulting from an

airport's inability to impose a specific restriction disapproved by DOT. Giving the Federal Government veto power over proposed new Stage 3 restrictions is a significant concession by airport operators. Nevertheless, we are willing to accept the proposal which gives carriers considerable protection by ensuring that their Stage 3 fleets will be subject to new restrictions only if they are approved by the Federal Government.

If an airport is prevented from enacting a Stage 3 restriction because DOT disapproves it, fairness and equity require that the airport not be liable for any damages that result from its inability to impose them and protect the surrounding community from noise. If the Federal Government approves an airport-proposed Stage 3 restriction, no Federal liability would arise; thus, the Federal Government itself would determine the scope of the liability it would incur, because it would decide the extent to which a restriction on Stage 3 aircraft could be imposed. There would be a balance between the Federal Government's desire to limit its liability and its role in promoting the growth of the National Air Transportation System.

We emphasize again that the August 22nd task force consensus represents a compromise on the part of all parties. It should not be viewed as a starting point for compromise with those who have now chosen to back away from the agreement.

What do we have to look forward to if we do not establish a strong federal noise policy? The noise issue won't go away merely because the Federal Government doesn't address it. Individual airports will continue to be faced with the need to address their local community's concerns. Recent actions, such as the proposed Stage 2 phase-out at Los Angeles, the night time noise rule imposed by the Port Authority of New York and New Jersey, and the proposed Stage 2 phase-out announced by the Metropolitan Washington Airports Authority have been taken at least in part, because there is no effective national policy.

Continued absence of a federal policy will undoubtedly result in more airports taking individual action. We are aware of the continuing complaint of air carriers that the proliferation of local rules results in a patchwork quilt, which makes it difficult for them to schedule flights. However, in the absence of federal action, a number of airports will be compelled to protect themselves and their communities from the noise of Stage 2 aircraft through a local phase-out.

Despite the difficulties and complexities which underlie the noise issue, we have made considerable progress over the past few years. We urge the Federal Government to adopt the task force approach and to use it as the basis for developing a national position to be advanced to ICAO later this month and in other world forums. The continued vitality of the aviation industry depends upon our addressing the noise issue in a cohesive, comprehensive manner so that all segments of the industry can know what the federal rules will be and can plan accordingly. Thank you, Mr. Chairman.

Mr. LAUGHLIN [assuming Chair]. Thank you, Mr. Howard.

Next we'll hear from Mr. Barclay.

Mr. BARCLAY. Thank you.

Mr. Chairman, the continued absence of a national noise policy will likely result in the atrophy of strategic airport capacity, and the wrong national noise policy—one that overreaches on the Federal role—will be even worse. Your committee's leadership is needed to see that future system capacity, which this committee has played such an important role to help finance, is not frustrated by either a non-existent or a counterproductive noise policy.

AAAE would like to concur with the excellent statement offered by AOCI and the specifics in it. Our only distinction between the two organizations comes from timing. AAAE Board of Directors met just eight days ago on the matter of our association's policy on noise. I personally believe that we would have also endorsed the August 22 task force position if the airline industry representatives had not withdrawn their agreement.

I'm an individual member of that task force, and I voted for the plan. But because of the lack of airline industry support for the compromises as detailed in the AOCI statement, the AAAE Board of Directors decided to adopt the following much more general position. Number one, AAAE supports the creation of a national noise policy which includes the phase-out of Stage 2 aircraft by December 31, 1999. Second, any Federal review process of local restrictions must first address the question of removing legal liability for potential damages from local airport operators.

This represents the first time our organization has officially called for a national noise policy. The position's broad nature is intended to protect our ability to negotiate specific policy proposals that meet these principles, but the principles are critical.

Mr. Chairman, a national noise policy that does not address local liability for noise damages is no policy at all. Because of the difficulty of addressing this issue, some have begun to suggest that a policy should be silent on the liability question. Such a conveniently myopic view may have political arguments to recommend it, but to obtain more than a cosmetic policy, liability must be addressed.

Airport operators ought to be held legally liable and politically accountable for the full range of matters that they control, but to wrest control while leaving legal liability and accountability vague is neither fair in the short run nor effective in the long run. We will aggressively oppose any national noise policy that does not make clear that airport operators are not liable when the Federal Government says they are not permitted to take local action.

AAAE believes that a national noise policy, one that includes a Stage 2 phase-out by the end of this century, is needed to avoid the dilemma that even when local rules are individually reasonable, the cumulative effect of numerous local rules can be potentially damaging to the national system. However, we can't emphasize strongly enough the negative impact too extreme a grab for national control will have on local capacity.

Some system users, out of frustration with differing local rules, yearn for a simple Federal solution—total Federal control of local flight restrictions. Unfortunately, this complicated problem has no simple solutions, and overreaching on Federal control would result in the exact opposite of the desired effect on airport capacity. Proposals for a national policy which would retroactively change existing restrictions or deny all future local controls on Stage 3 aircraft

would simply result in local politicians' refusal to add airport capacity when they have no say in controlling its use.

Airports are owned and operated by the citizens of local governments who continue to have a substantial right to determine the nature and character of their communities. If a national noise policy becomes a vehicle to deny reasonable local controls that don't substantially harm the national system, then the policy's ultimate result will be local intransigence on capacity additions that they do control.

A properly balanced national policy will not be simple or neat. It must go to some lengths to explain the need for national coordination of local regulations that go beyond the arena of locally-controlled, locally acceptable operating standards. Such a policy must define in principle and justify the line where interstate commerce interests must override local interests in order to maintain a national transportation system, and then individual local restrictions must be carefully measured against such a policy, with the burden of proof on those who would interfere with the airport operator's decisions.

Failure to carefully balance a national noise policy, just like the failure to adopt a national noise policy, will result in an accelerating decline of available airport capacity at key locations in our country's aviation system. AAAE believes that it's time to conclude this multi-decade debate and act on a policy based upon our stated principles and the best industry consensus that is achievable. Thank you, Mr. Chairman.

Mr. LAUGHLIN. Thank both of you, and I have a first question, and I would like both of you to address it, if you can.

Last week, the General Accounting Office testified that the bans on Stage 2 aircraft by a relatively small number of local airports could essentially amount to a Nation-wide de facto ban on Stage 2 at a date closer to 1995 than the year 2000. Do you think that this is the case, and would you see this as a problem?

Mr. HOWARD. Well, if there were enough airports in this country who, because of the lack of a national policy, began to impose local noise rules and these kinds of bans, it would in effect become a de facto national policy. But I don't think that's what is needed or what we should allow. The fact is that, undoubtedly, these separate initiatives would vary, they would present, I think, problems for the air carriers. They certainly are justified in the absence of a national policy, and in fact this is what very well may take place unless there is a national policy.

I think this is what we're saying here today, that we should move quickly so that there is some uniformity and conformity, and if we don't do it, this is in effect what's going to happen.

Mr. BARCLAY. The answer is, theoretically, absolutely that is a possibility, and we, as we've said, support a national policy, because we think that's the best way to move forward. I have to admit that I have trouble envisioning Armageddon without a policy, even though that's our preferred position, because the only noise is not the single element at work in these local communities. Economic impact on the local economy is at work as well, and to the extent a number of local communities' restrictions started having severe

economic impacts, I think you'd see other local political forces arise as well.

But clearly the most organized way to go about trying to get some—as we said in our statement, find that line where local control should stay in place as part of the system, but find the line where the national interest for an interstate transportation system takes over. That's clearly the preferred method of going forward at this point.

Mr. HOWARD. If I might comment, I think you used the year 1995. I would not envision the airports of this country who would move in this direction would be aiming at the year 1995. I just can't conceive of that.

Mr. LAUGHLIN. All of the statements from the aviation industry and community speak to the need for a balance between environmental concern of airport neighbors and the need to meet the air transportation demands of our country. Where is that balance, particularly in the near term, or the side of the residents in national noise policy, as the phrase is used by most everyone that's been to this hearing? In other words, why would the New Jersey delegation or any of the other members we have heard from—and we've heard from a lot—vote for a noise policy when we are discussing it here? Do you care to comment on that?

Mr. BARCLAY. Well, the issue of where is the balance I think the Chairman addressed very well in his opening statement when he talked about what they found they had to do for a water quality bill. You just have to lay out some standards, and then someone has to measure individual circumstances against those standards. There are a number of examples we can look at from the past where communities have taken local actions that probably didn't have an impact on the national system and others where, if you add them up in their cumulative effect, they're going to have a serious impact on, for instance, all cargo overnight service carriers.

And there needs to be someone making that measurement, and I think the best Congress can do is say we want a policy, we want it to live up to certain baseline standards, and then give it to the Department of Transportation to take it from that point, and have the industry working together with the Department to develop the best consensus we can.

Mr. LAUGHLIN. Mr. Howard, you suggest that the airports be subject to a Federal review and approval of all new local restrictions on Stage 3 aircraft. Why not current restrictions?

Mr. HOWARD. Well, I think that the airports need to keep in place the restrictions that they have. I think it would be very cumbersome, I think it would be perhaps even destructive to the transportation system as we have it today to roll back any of the restrictions that we now have on Stage 2 aircraft. The airports through the years have carefully constructed these restrictions, they've gone through public processes.

The airports are anxious to keep their airports open. They're anxious to have commerce. They're anxious to have flights into and out of these airports. And the reasons for these restrictions are very carefully entered into and very carefully constructed. So I think that when we talk about the balance in the system, the air-

ports really should be allowed to keep what they have in place so that they can keep the capacity that they've got in place.

As we look forward to quiet aircraft, to the Stage 3, I think this is where the compromises can be made and where the review makes some sense. But I don't think it would make any sense at all to go backwards and roll back. I think it would be a great mistake.

Mr. LAUGHLIN. The Air Transport Association suggests review and approval of local Stage 2 restrictions. Why are your groups opposed to this while supporting review of Stage 3?

Mr. BARCLAY. I think on that, for AAAE, we would be open to examining the issue of perspective Stage 2 noise restrictions in a review process as long as we were certain that the standard set out for that review was not just a disguise for simply denying them. Up to this point, the biggest detriment to any kind of a Stage 2 review process, I think, has been the issue of liability, that people, when you get in with folks with the Federal Government, and perhaps it's understandable, they want to be vague about who will be liable if these kind of restrictions are overturned, but they want to talk about, "Let's have a review process and perhaps overturn them." So if you can address the liability question head on, I think you can eventually get somewhere.

Now, all our members don't agree with reviewing Stage 2, because they just think that's something they've got to move forward on, but I think you'd get us as an organization to agree to that if you answered some of those questions.

Mr. LAUGHLIN. There have been suggestions from many witnesses that the Federal Government take a stronger role in seeing that there is better land use planning around airports. Do you subscribe to this, or is this an unwarranted intrusion by the Federal Government into local prerogatives?

Mr. HOWARD. I think this is probably the most difficult area of all for national policy-making. Bob Aaronson referred to an approach which we discussed in earlier task forces on this and the possibility of actually having the States empower the local authorities to introduce zoning around communities and around airports, and if they did not, they would lose a portion of their transportation funds. This is reverse incentive.

I think that there also may be more positive incentives in terms of funding that could be helpful. It's a difficult area, and we have no specifics, but all of these possibilities need to be discussed certainly.

Mr. BARCLAY. I'd like to add on that that a lot of theoretical conversation goes on about that concept, and it's great to talk about do we need more Federal controls, but the reality is when you get controls, you get a bill presented with them, and if we were really talking about even the local airport operators who don't have control of all the land around their airports—usually there are many jurisdictions surrounding an airport that wind up being impacted by noise, and when you talk about taking control and people envision compatible land use all around an airport, the facts are at many major airports there simply isn't enough viable compatible need out there in that community, and you wind up taking land away from people as use.

And if you've got enough money to take control and pay the cost of control, that's one thing; but at the local level, we haven't had the ability to do that, even where people were willing to sell for the right price, and I think that the Federal Government would find the same thing. I do think some of the users have this fanciful view that we can somehow take control without a price being attached to it, and I just don't think that's so.

Mr. LAUGHLIN. Thank you very much.

At this time, we'll have questions from the gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Mr. Howard, Mr. Barclay, we thank you for your always excellent, constructive and very useful testimony. I just have a couple of questions.

Mr. Howard, AOCI's recommendations for the national noise policy that we're discussing here over these two weeks include giving the proprietors the authority to limit types of aircraft and restrict operations on the time of day. I gather primarily that would be directed at night time operations. If these recommendations were to be adopted, don't you think it would be likely that the demand for air services could not be met because of limitations that might be imposed by airports on air carriers? Couldn't it have the potential, at least, to severely limit the capacity and curtail the capacity?

Mr. HOWARD. Mr. Clinger, you're talking about, I guess, the retention and continuation of restrictions on Stage 2 aircraft primarily.

Mr. CLINGER. Yes. In terms of times of operation.

Mr. HOWARD. Right. And I think this gets back to the essential issue, that the airport is interested in expansion. It's interested in more air service whenever it can get it. And the reason that it puts these restrictions in is because without them there are going to be more restrictions. The communities are going to make it so politically difficult for the airports to continue operations that the airports enter into these agreements, which in effect keep the airports open and make it possible to provide service. So that we look at it really quite differently, that without national noise policies, the airports have to do these things which make sense to continue to provide the capacity that they do.

Mr. CLINGER. Do either one of you believe that Stage 3 aircraft should be subject to limitations such as time of day or frequency of operations? In other words, what, if any, kind of limitations do you think that airports should have on Stage 3 aircraft?

Mr. HOWARD. Well, I think what we're proposing is that if an airport believes that it needs to have a restriction on Stage 3 aircraft that we're willing to concede that this could be reviewed by the Department of Transportation, this need. On the other hand, if the Department turns down a rule-making on the part of the airport, turns down something, then we think that the airport should be absolved of its liability.

Mr. CLINGER. Okay, you'd give the FAA a veto power, but then in giving it the veto power, you would also say that they would have to assume liability for a veto?

Mr. HOWARD. Or that the airport becomes absolved, because otherwise it can't really protect itself from the liability.

Mr. CLINGER. Well, if you're absolved, somebody's got to have that liability, and I would assume that that would devolve upon the Federal Government, would it not?

Mr. HOWARD. Well, there's a lot to be discussed there.

Mr. CLINGER. Okay. Given the obviously growing sensitivity that we've seen over night time aircraft noise—and we've had a lot of testimony about that—and since most of the overnight package carriers operate at night, what do you see as the future of the overnight package airplane delivery service? Do you think that that's going to be affected by putting limitations on night time operations at airports?

Mr. BARCLAY. I think that's the kind of case, Congressman, where in that specific instance or in any of the others when we talk about what should the system look like in the future, as long as you have locally owned and operated airports and the national transportation system, you can't pretend either that there's no role for the locals or that there's no roles for the nationals, and that is exactly the case that, at least, I've envisioned in preparing the testimony, where you could have a number of individual local restrictions put on at various communities that if you took a parochial view of only community might be reasonable at a Stage 2 night time ban, and they might have done nothing wrong in developing that.

But there is also a role for someone nationally to be saying at some point, "Okay, we're getting to the point where there's enough of these that cumulatively they are interfering with having a national system of overnight package service, and we can't continue to have that," so we've got to come in and have a federal role in saying, "What you're doing locally might be reasonable just looking at you, but we're not looking at only that." So that's the kind of balance in that particular case that I think is exactly what we're saying we are willing as an organization to agree with.

Mr. CLINGER. Going to the next step of that, what about those that argue that if there is to be any noise policy promulgated by the Federal Government that it should be applied uniformly to all airports without exception on the theory that to do otherwise would be to give competitive advantage or disadvantage to some airports over other airports and that you would have in effect a skewing perhaps of service because of more rigid restrictions at one airport than another? Is that a concern?

Mr. BARCLAY. Well, you've already got that, because you've got some airports that have existing restrictions that we would certainly hope a national policy would not roll back. If a national policy becomes viewed as a vehicle to take away things that people already had as opposed to setting standards for the future, it's going to be viewed much differently by the communities out there than what we would hope. So the issue of variations among communities—there are differences among communities and their sensitivity to this problem. You want to have differences in that area we've talked about below the line that will have to be drawn, where local operators will have differences, and it's only above the line where

national interests become involved that you have to have consistency.

But I think it's too simplistic a view of this problem to say we can have one standard for every community out there, it will always be the same, and we can always be assured of that. The communities are too heterogenous for that to happen.

Mr. CLINGER. What about the airports that presently restrict all operations of Stage 3 aircraft, such as John Wayne, Long Beach, and so forth? What has been the impact on them in terms of changes in the frequency of service to those airports or any other impacts because of their more rigid restrictions on the types of aircraft that can fly in or out of those airports?

Mr. HOWARD. I'm not familiar with the scheduling details there. Again, I would be inclined to say that at that particular airport, if there weren't those quiet aircraft operating into and out of it, there might be no service at all. But, again, Mr. Clinger, to get back to your earlier question on the differences among and between airports, we heard from George Doughty today about the thousands and thousands of acres of land which he has for his airport. He almost needs probably very little in the way of national air policy at the present time. He may in the future, but compare that with a La Guardia Airport or an Orange County Airport, where the environmental situations, the populations, the thousands and thousands of people living within the Ldn 65 zone are simply not comfortable.

So I think it simply points to the need for continuing policy-making at the local level in compromise with and living together with a national noise policy that makes sense. The two have to work together. You cannot exclude local rule-making from this issue. It simply wouldn't be desirable. But we do recognize that there are some broad parameters for national policy-making, which we've referred to and which we will continue to endorse.

Mr. CLINGER. Well, I hear what you're saying, and I think I'm sympathetic to that as somebody who represents airports—very small regional, rural airports—we would certainly not want to have imposed on us a very rigid federal standard which would be totally unnecessary in the types of areas that I'm representing.

Gentlemen, I thank you very much for your testimony.

Mr. OBERSTAR [resuming chair]. It's good to be back to the committee. I'm sorry for my absence this afternoon necessarily due to discussions surrounding the budget summit agreement and other matters affecting transportation and the Public Works Committee's responsibilities, as well as my work on the Budget Committee. It isn't a pretty picture, by the way. There's going to be very heavy lifting over the next two weeks, I must say.

But I do appreciate very much your testimony, which I read over last night, so I was prepared for the information you were going to share with the committee. I wanted to review just a few things that may well have been covered by other questions or other members, but, first of all, technology.

You know, we place an awful lot in this country of reliance and trust in technology to solve the problems that technology has created. Obviously, technology created the aircraft. And it has some burdens with it, it has some benefits. So now we're looking to tech-

nology, at least in large part, to resolve the problems that the technology of aviation has created.

FAA says, "We're working on these. We've got a program." I'm going to hear what their answer will be over the next 30 years, what do you expect to be the advances of technology two, three decades from now that are going to resolve this noise problem? Given what I've learned from the manufacturers, and I've been at Airbus, I've been at McDonnell Douglas, I've been at the Boeing facilities, I've been at their noise abatement programs, I've been to the Noise Abatement Program of NASA, and members of our subcommittee and our subcommittee staff have been there as well, to explore what are the opportunities.

I don't see and I don't hear from the industry technologists any massive breakthroughs just on the edge, waiting for us right around the corner. You are the practitioners, you are the folks on the front line of this issue. What do you see as the limits or the opportunities for reduction of noise through technology?

Mr. HOWARD. Well, Mr. Chairman, I guess we've heard pretty much what you've heard, that beyond Stage 3, there isn't much which is on the drawing board, and there are gradations within Stage 3, and we know that. But in terms of what we've read and what we hear, it will be a decade before anything new comes along, or more than a decade before anything new comes along which is really significantly better than the Stage 3.

But still I think that we believe that Stage 3 is extremely important and that the transition to it is extremely important for airport operators, so we do look hopefully to this deadline of 1999 as a significant year when, by that time, the contours will have shrunk. We're certainly benefitting from this technology now, and I think it's the best thing that we've got going, and we should capitalize on it.

Mr. OBERSTAR. Mr. Barclay, any other comments?

Mr. BARCLAY. Ditto.

Mr. OBERSTAR. All right. Then what rationale is there for allowing one airport or any one airport to impose for its purpose a rule that all aircraft serving that airport must be Stage 3 and only Stage 3 and not requiring that for other parts of the country or some lower limit than that? What's the rationale for allowing one airport to do something that may have consequences far beyond its environs?

Mr. BARCLAY. Well, I guess it's that last part of the sentence that I would agree with you, if we're talking prospectively, maybe there should be a Federal role in saying they cannot. If we're looking at restrictions that are already in place at three airports that are already all Stage 3 and then others that have some kind of a phased-in Stage 3 currently in place, there's a number of circumstances, I think, in life where we see an element of race to the courthouse having been part of a system that matured and got developed, and we said, "That's a disturbing pattern, so out in the future we're going to make changes to how those decisions are made," without backing up and redressing things that people have already gotten used to.

The Chairman knows well the kind of tough local political balances that when you're finally in Minnesota able to come to an

agreement on what to do about wolves and whether or not you shoot them, you may not have the perfect solution, but you don't want to come back and readdress it again a couple of years later because there's a national standard that's adopted. And I think that's the kind of a case we face here, that we've got a lot of opportunity, the system is working now; some of the users, I think, dramatize the problems of the existing system.

We're here saying we agree that there is a pattern that one can envision out in the future that the Federal Government has a role in seeing doesn't come about, and that's the way we'd like to look at it is prospectively. But even within that kind of a framework, our argument would be there are still local actions to take that won't impact dramatically the national system but will help a locality fine tune and adjust to its problems that are different from another community's problems.

Mr. OBERSTAR. That's a key phrase, "That won't impact the national system drastically," if I may add a word to it. I think that's what we have to be concerned about.

Mr. BARCLAY. Absolutely.

Mr. OBERSTAR. When we in the Clean water program—to draw a parallel—allowed States to exceed the Federal regulation about phosphorous removal and nitrogen removal and BOD loadings to lakes and streams, we allowed States to make certain economic and quality of life decisions, that if by being tougher than the national standard they drive industry away or keep industry out or cause industry in their State to pay more for their production facilities, they're making that choice deliberately, consciously and aware of what the consequences may be. And industry also has a choice.

If you've got an airplane, you don't really have that choice. You've got to fly that airplane in, and if all you have is Stage 2 and you can't land in a particular community unless you have Stage 3, then you've got some very, very huge costs and impact on the total system. So I'm not asking for definitive solutions. We are in the exploratory stage. Sometime next year we're going to develop a bill, and we're going to have to reflect some of this thinking that is coming out in the course of these hearings.

Now, what emerged in the earlier hearings, looking back over my notes, where the division between rural and urban, if you will—the green field airports like Dallas-Ft. Worth, which keeps coming back as a classic example, and I suppose in 10 years from now we'll look back on Denver—airports that started in the 1920s or 1930s and around which cities built up and now have very little flexibility and room to move because of geography have one set of problems. Those like Dallas-Ft. Worth and Denver and any other place where they're building a new airport have different opportunities as well as problems.

They all come down to zoning and land use on that side. Would you offer some distinctions in the way in which noise is dealt with in those two settings, and are they in conflict? Can you contrast them?

Mr. HOWARD. Well, I think that you can see today by virtue of those airports which are in congested areas and have old airports and old communities that those airports have literally been forced, such as the Port Authority of New York and New Jersey, into rule-

making, which they have to entertain, they have to promulgate in order to keep those airports open and keep the tracks in and out of those airports open.

So this is a far different situation than it is in Dallas or in Denver, and I think that, again, to repeat, that the national noise policy has to reflect these differences. Even Dallas-Ft. Worth has problems now at the end of one runway which are quite surprising to its director that he's got noise problems in Dallas. So as time goes on, the airports of tomorrow, which are uncongested and there are great green belts around them, they will also become congested.

But certainly with the Stage 3 aircraft we have for all airports a decreasing problem with Stage 3, but I think the important thing is that whatever national policy evolves, it has to reflect these differences, and it has to reflect the needs of the local operators to continue to make reasonable rules on Stage 2 aircraft.

Mr. OBERSTAR. Okay. Very good, and you responded to the questions I've raised. But, for example, in Denver, would not this have been an opportune time for the Department of Transportation to have said to the city of Denver or the Denver airport authority—and I don't know who runs which, whether it's an airport authority that has land use zoning authority or whether that authority is held by——

Mr. BARCLAY. City/county.

Mr. OBERSTAR. City and county have it. All right. To say, "As a condition of receiving the AIP grants and the discretionary fund for the Secretary, you have to adopt a land use zoning plan that meets our approval or that does certain things to protect that investment out into the future so that if you need to expand 10 or 20 years from now you don't preclude that expansion possibility by inopportune or short-sighted, inconsiderate land use zoning decisions."

Mr. BARCLAY. If they had a policy, they could have said that, I suppose, but Denver is an excellent example that the director just testified that they have one runway, that in order to get that built they had to agree that one runway with the neighboring county would only be a Stage 3 runway. Now, you can look at that as a restriction, or you can look at that as the important element that got us the added capacity of the new Denver airport. So sometimes restrictions are things that let us do things.

If we were presented with the opportunity to get a brand new airport in the Los Angeles area, if it was an all Stage 3 airport—and that's the only way we could get it—the industry as a whole might very much welcome that addition to capacity. So it certainly depends on which side you're sitting on as to how you look at restrictions, whether they're additives to capacity or detractors from capacity.

Mr. OBERSTAR. Thank you.

I see that Mr. Doughty for the Denver International Airport is here. Would you like to make some additions to that statement?

Mr. DOUGHTY. Thank you, Mr. Chairman. I really don't have much to add except, as we pointed out in our testimony, the opportunity to negotiate with the local jurisdictions, Denver had to negotiate with Adams County, which surrounds the new Denver air-

port, and we had to negotiate an agreement for that airport, and there was give and take on both sides. There is land use controls as part of that. We recognize the importance of it as well as the FAA and the airlines that worked on the project.

I think with the history that we now have and the knowledge we've gained in this area over the years, I think when an opportunity of a new airport such as Denver comes about, the local governments, the local airport operators, the FAA and the airlines, I think, can work out a workable solution that will not only solve the problem in the immediate future but will protect the airport well into the long term.

Mr. OBERSTAR. Thank you.

I just think that from my experience in other Federal programs that it is often welcome by various interests to have the Federal regulation requiring a certain action to be done so that those who face an angry electorate or an angry local public can say, "Well, look, it wasn't my fault. We had to do it. The Federal Government told us to do it. Go complain to them." They're a long ways away, it's harder to get, the policy is achieved, and the result is accomplished. We will have to explore that further. I would love to discuss it more, but we're on track, and I get the sense of what your concerns are.

One final thought. I explored this with the FAA representative this morning, and that is safety and noise. As airport operators, you know what's involved in approach patterns and takeoff patterns and the diversity and the mix that's needed to accommodate shifting weather conditions and the times of day. Are there certain circumstances in which there are irreducible conditions attached to safety that preclude making adjustments to minimize noise impact?

Mr. HOWARD. Well, I guess the answer is yes, but I think that the safety record on this has been excellent, and I think that those abatement procedures that have been put into effect, the preferential runway procedures that have been approved by the Nation's operators, have been done in close coordination with the FAA, and as I said, I think, Mr. Chairman, the record on this really speaks for itself that we have a safe operation, and when we need good noise abatement procedures, they are safe procedures.

Mr. OBERSTAR. All right. Is there any inherent contradiction in requiring the FAA to listen to the local community and their concerns about noise impact when they want to change flight patterns, as was done on the East Coast Plan—any inherent contradiction between that request and safety?

Mr. BARCLAY. I don't think so, Mr. Chairman. I mean, I think part of our members' job is to listen to the communities and try to come up with creative suggestions that are there potentially for flight patterns, but then take them to the FAA, who is the final arbiter, and I've never heard of one of our members, you know, objecting to something saying, "We've got to do something even though FAA says it's unsafe," and we agree with them as the final judge on those issues. We are going to continue to bring them creative ideas, some of which they may so go too far.

Mr. OBERSTAR. Taking this one step further, that if we draft legislation in the future that would require the FAA to be part of a listening process and take into account the concerns of local com-

munities about the noise impact, the relative merits of one approach over another or one flight pattern or a series of flight patterns as compared to others that would minimize noise, how do you balance safety against noise impact under that circumstance? Provide some language for flexibility for the FAA to put safety as its primary consideration, but in such a way that they can't use that to escape their responsibility to listen to people and hear out their concerns about noise?

Mr. HOWARD. I think it almost should go without saying. I think the FAA, if it didn't consider that safety was its primary concern, that it would be falling way short of its primary responsibility.

Mr. OBERSTAR. All right. Thank you very much. That's very, very helpful. We will consider the dialogue begun and in continuation, and we hold you dismissed.

[Mr. Howard's prepared statement appears on p. 665.]

[Mr. Barclay's prepared statement appears on p. 627.]

Mr. OBERSTAR. The members of the Democratic caucus of the full committee are going to meet here. We're going to have to recess for probably 30 or 35 minutes, regrettably. The subcommittee will stand in recess.

[Recess.]

Mr. OBERSTAR. The Subcommittee on Aviation will resume its sitting.

Apologies for our final witness of the day, Mr. Wagenfeld of Valsan Partners. I can remember only one day more disrupted than this one, and that was last week when we had a whole series of recorded votes on the House floor that continually interrupted the proceedings. Today we've been interrupted for other purposes, all related to the budget and the future of the programs under the jurisdiction of the Committee on Public Works and Transportation.

So with that further apology, Mr. Wagenfeld, let me assure you that the last shall be first and that your testimony will have undivided attention and that I appreciate ever so much your patience and your good spirit.

Mr. WAGENFELD. Thank you very much. I believe in the Democratic process. Shall I go ahead?

Mr. OBERSTAR. Please proceed.

TESTIMONY OF ROBERT E. WAGENFELD, PRESIDENT, VALSAN PARTNERS

Mr. WAGENFELD. Thank you, Mr. Chairman and members of the subcommittee.

Valsan Partners appreciates this opportunity to testify before you. In the testimony you have heard earlier in these hearings, the burgeoning problem of airport noise has been defined dramatically for you. At this point, I would like to tell you about one solution that is currently available, one that will enable a significant number of aircraft in the United States carriers' fleets to meet Stage 3 requirements in an economic and technically feasible manner.

For the past two decades, the 727 has been the backbone of our domestic carriers' fleets, a very safe, reliable and versatile airplane. Today over 1,150 727s are in service in the United States

alone and several hundred more in other parts of the world. When I testified before this subcommittee in July 1986, I promised the development of a re-engining modification to convert the 727 aircraft to a Stage 3 compliance. In 1988, some two years later, Valsan received an FAA supplemental type certificate for such a re-engining of the 727-200 aircraft.

This year, Valsan's supplemental type certificate was extended to include the re-engining of the 727-100 aircraft, of which there are about 500 in service. In re-engining the 727 aircraft, Valsan is replacing the two outboard engines with newer, high bypass Pratt & Whitney JT8D-217/219 model engines and installing an exhaust mixer and acoustic tailpipe on the center engine.

In today's intensive, competitive airline industry, airlines expect aircraft modifications to be multi-functional. In addition to noise abatement, the airlines are interested in increasing fuel efficiency and improving performance in their aircraft. And I might say parenthetically, this is even a greater interest after what has happened the last two or three months.

With the addition of 10,000 pounds of thrust with quiet fuel efficient engines, Valsan is offering a deep Stage 3 noise compliance, substantial fuel savings and improved performance. The re-engined 727 aircraft has a 10 to 12 percent fuel improvement, a range extension of 300 nautical miles from sea level airports and up to 1,000 miles of range extension from an airport like Denver during the summer time, and a reduction in the minimum field length required for takeoff of some 17 percent. Finally, and I think often overlooked, is the critical factor of the thrust-to-weight ratio of the aircraft is improved by 23 percent, making it a much safer aircraft to operate.

The resulting noise reduction is dramatic. The heaviest and highest powered 727-200 aircraft will, through re-engining, meet Stage 3 without trade allowances. Re-engined 727 aircraft with lesser weights have noise profiles which place them considerably deeper into Stage 3 for noise compliance. Valsan delivered the first re-engined aircraft to Sterling Airways in Denmark in October of 1988. Sterling has operated the aircraft for nearly two years now with excellent operational and economic results and no difficulties in its operation. Up to this time, 12 727 aircraft have been re-engined by Valsan, eight of those for Federal Express.

The FAA's 1986 report to Congress on Fleet Modernization forecast that the United States' fleet of 727 aircraft, which numbered 1,188 in 1985, would reduce to 917 aircraft by 1990. Historically, the retirement of aircraft from the U.S. fleet has been slower than predicted, and the 727 is a case in point. Today there are still 1,157 727 aircraft in the United States' fleet, representing a reduction since 1985 of only 31 aircraft rather than the 271 retirements predicted by the FAA in 1986. This result was acknowledged by the FAA in its 1989 report to Congress.

Valsan has the production capacity for at least eight re-engined aircraft per month, using modification facilities and centers in different parts of the United States and abroad. If Valsan's production were dedicated to the U.S. fleet of Stage 2 727 aircraft, Valsan alone could convert most of the fleet to Stage 3 during this decade. To the extent that the amount of capacity of other retrofit is fully

used in the effort, the conversion of the United States' Stage 2 aircraft can be completed within five to six years—that is, by 1995 or 1996.

Airline Capital Associates of New York has studied the likely time table and cost for the Stage 3 conversion of all Stage 2 narrow-bodied aircraft in the U.S. fleet. Based on the publicized reports of the projected capacity and pricing of hushkit and re-engining companies, the United States' narrow-bodied Stage 2 fleet can be converted to Stage 3 before the year 2000, meeting meaningful phase-out waypoints along the way and at an incremental cost to the airlines of less than $1 million per aircraft.

In making the study, Airline Capital Associates used the same assumptions as were used by American Airlines in its 1988 study "Economics of Stage 2 Aircraft Replacement." Past experience shows that the purchase of new equipment seldom removes the older aircraft from the fleets of the United States' carriers and never totally accomplishes that removal. Recognizing this fact, the FAA reports to Congress on fleet modernization have included alternatives which would provide special benefits when a Stage 3 aircraft replaces a Stage 2 aircraft, which is then removed from the United States registry.

Valsan's program accomplishes this by converting existing Stage 2 aircraft to Stage 3 aircraft without the loss of capacity for the airlines. In your consideration of solutions for the Nation's noise problems, we urge that incentives be developed which would induce carriers to add Stage 3 equipment under circumstances where Stage 2 equipment is being converted or removed from the domestic fleet.

In conclusion, Valsan believes that its re-engining of the 727 aircraft is workable and practical both from the standpoint of complying with strict noise restrictions and meeting the carriers' financial and operational needs. In short, Valsan's re-engining provides a viable and economic solution to community, industry and Federal concerns.

That completes my statement.

Mr. OBERSTAR. Thank you very much, Mr. Wagenfeld, for a most interesting presentation. I was fascinated with your testimony as I read over it and again as you delivered it today.

First of all, could you tell us a little bit about your company—where your re-engining facilities are located and what your current employment level is?

Mr. WAGENFELD. Yes. I think part of the uniqueness of the modification is that it is very easily done. By that I mean the new engines are simply different versions of the same engine, so as we like to say in this business, the aircraft doesn't know the difference between the new engines and the old ones. Therefore, the modification itself can be done by the airlines at the same time they're doing maintenance on the aircraft.

However, we have established modification facilities under contract, and the key one is with North American Rockwell in Palmdale, California, and they have done most of the aircraft in 1990 that we have modified. Sterling has since modified a second and is working on a third aircraft at its own facilities in Copenhagen, Denmark. We provide the drawings, the installation package, the

engineering expertise, and, of course, all of the components. The components are made by Pratt & Whitney. The engines, of course, the nacelles, and casing of the engine is manufactured by Rohrer Industries, and it's the same nacelle that's used on the MD–80.

So our function has really been to pull those together to create a combination on the aircraft which is certifiable by the FAA and would also meet Stage 3. So our employment itself is not large, probably about 25 people, but we work under contract with companies like Pratt & Whitney and Rohrer and Rockwell.

Mr. OBERSTAR. It's amazing that such a small employment level can do such a big job.

Mr. WAGENFELD. We've got a lot of big manufacturers who are under contract with us, and they really do the work. I think the idea here that I would like to get over, the principal thing, I think, in my testimony is that to me the magnificent genius of this country has always been that when there's a problem, Yankee ingenuity, if you want to use an old phrase, or a technological forced solution is arrived at. What drives it is that somebody is going to risk the capital to develop it in the hopes that he will make a profit. It's very simple, and that's really what we've been up to. If it has, as my wife likes to say, an environmental benefit, all the better.

Mr. OBERSTAR. And so yours is a small private venture of capital. You're not part of a larger corporation?

Mr. WAGENFELD. That's right. In fact, the name Valsan is an acronym of my wife and my daughter. She said that I could use the names if I made a profit. [Laughter.]

Mr. OBERSTAR. Could you describe for us the difference between hushkitting and re-engining, just so we have that as part of our record, and whether there's any difference in result from the two?

Mr. WAGENFELD. Oh, there's definitely a difference in how it's done and in the result. In our particular program, we do both. If you picture a 727 in your mind, it has three engines. The middle engine is mounted in the fuselage itself, and the engine breathes, if you will, down a long S-duct mounted on the top of the fuselage. Technically, it's very difficult to replace that engine because of the need to reconstruct the whole tail section of the aircraft.

So what we did was to develop a hushkit for the center engine, and then we replace the outboard engines with new engines which are much quieter. The difference between the two, really—re-engining, of course, you replace the whole engine with a more modern, fuel efficient, quieter engine and that way you directly achieve noise compliance. With a hushkit or a noise reduction device, you simply replace usually nacelle sections, the intake, for example, or the exhaust part of the engine, with different parts of the nacelle in an attempt to reduce the amount of noise which escapes from the engine, either right through the sides of it, out the front of it, or out the back.

The particular problem faced with the hushkit is that once the high velocity air escapes the back of the engine, there's not much you can do with it. Generally, hushkits have a much lower capital cost—it could be as much as half to two-thirds less than re-engining—but almost never provide any performance improvement. That is, no saving in fuel. They will or should—many of these programs are under certification now, some have been certified—they

should get the airplane to comply with Stage 3. The difference is that unlike a new airplane or a re-engined aircraft, the compliance is usually marginal with Stage 3. It doesn't go very deep into Stage 3, and sometimes trade allowances are needed.

Essentially, that's the difference in the two methods of modification.

Mr. OBERSTAR. When you say "replace the entire engine," is that with a rebuilt——

Mr. WAGENFELD. No, it's a new production engine.

Mr. OBERSTAR. A totally new production engine.

Mr. WAGENFELD. That's right. That's why it's so expensive. And the airlines' assessment of this, as a purely economic matter, is whether or not there are fuel savings, the ability to operate the airplane at very noise restricted airports, the ability to carry a greater payload. For example, in our case, we increased the thrust of the airplane by 10,000 pounds, almost 25 percent improvement in the thrust-to-weight ratio of the aircraft. So if it can carry greater passengers over a longer distance, then it has an increase in revenue as well as a reduction in cost, and the airlines will examine that to see if the investment will pay back for them in the same way they would do if they assessed the purchase of a new aircraft, total.

Mr. OBERSTAR. What is the current market value of a 727 when sold, you know, as is done? Federal Express has purchased a number of them from foreign carriers and then had to rework the aircraft because they took them in such bad condition that they needed the upgrade just to carry freight. What I'm trying to get at is the relative cost of hushkitting or re-engining as a percentage of the market value of a new aircraft, recognizing that it's very difficult to get new 727s in mint condition?

Mr. WAGENFELD. Well, that question is quite susceptible of answer. If you took a 1980 727 and purchased it a year ago, it probably had a value in excess of $12 million. That value has dropped probably to about $9 million or less today, and there are several reasons for that. The chief one, I think, is the overtaking of the delivery of new airplanes or capacity with the domestic traffic growth. That's one thing. Another thing has been the increasing stringency of local noise rules, particularly, and finally, I think, certainly the great rise in fuel prices. After all, this is a three-engine airplane; it generally uses more fuel than most of your two-engine airplanes. So that value now is about $9 million.

The re-engining costs the same amount, about $9 million on a list basis, but I can assure you that the larger airlines in the United States will not pay anything like that number. That's simply not the economics of this business. There are not that many big buyers anymore, companies like United, American and Delta have the ability—a very real ability—to force lower prices on us, on Pratt & Whitney, on General Electric, on Boeing, but that's basically the list price if you bought just one.

So therefore, if you did that, you would have an airplane at a cost of $16 million to $18 million that will do the same thing as a new airplane at half the cost. A new airplane, like a new 737-400, is about $30 million or $32 million.

Mr. OBERSTAR. That is really the market question, though, for a carrier. The tradeoff is not hushkitting or re-engining versus the

cost of buying another 727, which you're not likely to get in mint condition and certainly not going to get new, because they aren't manufacturing new ones——

Mr. WAGENFELD. That's right.

Mr. OBERSTAR [continuing]. But the cost of a comparable aircraft that would carry a comparable number of passengers, and then you're into the 737-300, 400 series.

Mr. WAGENFELD. That's right. The airplane that's about comparable in size is the 737-400 or the A-321, both of which are well in excess of $30 million. The 757 is a quite comparable airplane, but it's quite a bit larger, and that is about a $45 million airplane. Although, again, the larger airlines do not pay that high a price.

Mr. OBERSTAR. If you have a relatively mid-term cycle 727, a carrier might decide that it's worth the cost of re-engining if they can amortize that cost over some five or 10 years.

Mr. WAGENFELD. That's right, and that's exactly what we're trying to convince them is a good thing to do.

Mr. OBERSTAR. What do they usually consider as a reasonable amortization period for that?

Mr. WAGENFELD. I think that 10 years is the outside. It should run between eight to 12 years on the outside.

Mr. OBERSTAR. That brings me to a point that you raised, and that is incentives. We should "urge that incentives be developed which would induce carriers to add Stage 3 equipment." Do you have in mind tax incentives?

Mr. WAGENFELD. Yes. That's the key one.

Mr. OBERSTAR. What would be most attractive to carriers in the tax field that would induce them to make these investments?

Mr. WAGENFELD. There are several things that you can do. In the testimony I gave in 1986, I suggested that an investment tax credit is a good way because you can zero that right in. You can say, "You will get this credit only if you do this." Now, of course, that raises other questions. Why shouldn't a carrier get the same kind of tax credit if he buys a new airplane, which used to be the law? Perhaps another way is to give him a more rapid means of depreciation for an airplane that he's invested in for environmental reasons, among others, to make it a Stage 3 airplane. That works only—not only, but better—for a carrier which is profitable, obviously, because the accelerated depreciation is another form of tax deduction.

There are many ways like that, and I can submit a list of them to you. I would be glad to do that. Which are not like giving some kind of subsidy directly, really, although one recognizes that it will impact—and this is not a good time for it—tax revenues in one way or another.

Mr. OBERSTAR. Has your company benefitted from the pressure in Europe to move to Stage 3 aircraft because of the same environmental considerations over noise as we are experiencing in this country, only there in Europe it is much more intense because airports are located relatively near very heavily concentrated population density metropolitan areas?

Mr. WAGENFELD. Yes, we have. The principal benefit, I think, has been the clear intention of the principal European industrialized countries to have an all Stage 3 fleet, in their major carriers,

anyway, by 1992, a date that would stagger us here. But it's a little different. The Air Frances and Lufthansas are very close to that now.

But what the Europeans have done, as you well know, is they ve adopted a firm non-addition rule, which doesn't permit after the 31st of this month the increase of Stage 2 aircraft amongst any of the 22 member states. By that I mean if Lufthansa, as it does, has only 16 Stage 2 aircraft on the German registry now, that's all it can ever have.

Furthermore, the application of the rule by the various, shall we say, FAA counterparts in Europe has been very rigorous to the extent that the rule is interpreted such that an airplane on the German registry cannot be sold to a French company and placed on the French registry. In other words, they made it apply pretty much to the 22 member states of the European economic community.

That has clearly been a benefit, but we should be understanding of this. It's not just, I think, that Europe has a powerful environmental lobby or green movement, as they do, but one can safely conclude that the major industrial countries, which are substantial investors in Airbus, would welcome these rules.

Mr. OBERSTAR. Oh, my goodness, yes. We heard that from Airbus during our meeting with them in Europe over a year ago. Do these estimates that you've given us and your performance record, which is very, very commendable—very impressive, in fact—apply to DC-9s?

Mr. WAGENFELD. Yes. That airplane is a little different. The build profile of a DC-9, the vast number of the airplanes were built between about 1967 and 1970, roughly about 60 percent of all the DC-9s, which means that by 1990 all those airplanes are in excess of 20 years of age. That raises, of course, aging issues, which the FAA has pretty well settled now. By that I mean the carriers know what the cost will be for them to repair those airplanes so they comply with the FAA's airworthiness directives and service bulletins.

It's just perhaps coincidental that I'm also a partner in a company which has a pure hushkit—by that I mean it has no re-engining feature in it, such as Valsan has—and using equipment manufactured by Pratt & Whitney under a contract we have with Pratt & Whitney we have developed a hushkit for the DC-9 which is under FAA certification now. It should be certified by this December. We already flew it for FAA noise compliance the middle of last month.

This is a program like two or three others that are essentially sponsored by Pratt & Whitney. They've done a very good job in this area.

Mr. OBERSTAR. Are you doing this in conjunction with Airborne?

Mr. WAGENFELD. Yes, that's correct. They're one of the other partners.

Mr. OBERSTAR. I thought so, based on my discussions with Mr. Wiseman. The question then arises, would it be possible to project conversion of Stage 2 fleet to Stage 3 by the year 2000, given your capabilities and those of other companies?

Mr. WAGENFELD. Oh, definitely, yes. It could be done earlier, as I said in my testimony, but I think you have to always make allow-

ances for carriers that may not have the financial strength of others, at certain times in the business cycle they're not making a profit. All those things have to be considered. But if you're talking about the cost and the production capability, as I said, it's an average increment per aircraft of about $1 million averaged out, and the production capability amongst the seven or eight companies that are now in this business would make it quite feasible to convert all the aircraft by 1996.

And you've heard a good deal of testimony here, I think, advocating a 1999 final cut-off date, which I think is probably a sound approach, but what is also part of that sound approach is that, as we have historically done, there needs to be a gradual phase-in of Stage 3 compliance. Otherwise, everyone will wait, and it will be impossible at the end. There are just too many airplanes.

Mr. OBERSTAR. Yes, certainly. And what you have cited in your testimony that I find additionally appealing, or at least it should be appealing to the airline industry, is that in the re-engining you have a gain in thrust and fuel efficiency.

Mr. WAGENFELD. That's right. That's correct.

Mr. OBERSTAR. So not only does the carrier enjoy a benefit of noise reduction but also in operational efficiency and cost saving, and they're going to need that as the fuel price increase hits them in the weeks and months ahead and maybe for some years ahead.

Mr. WAGENFELD. That's right, but there's another very important factor that we must consider. These are very large fleets of aircraft. There's almost 3,500 Stage 2 aircraft in the world, much larger than was the case when we moved from Stage 1 to Stage 2. So what we have to consider is the benefit to the airlines of providing a modification which gives these benefits of noise compliance and fuel saving and thereby significantly raising the residual value of the aircraft. When airline X is finished with it, it can truly sell it for a significant amount of money, because it's usable and thereby recapture part of his investment that way, use that money to buy a new airplane. This has been the cycle historically, and it should continue.

Mr. OBERSTAR. Earlier in the day, the FAA testified that we may well be at the outer limits for the next 10 or 20 years of improvements in technology that will give you kind of a quantum leap forward in noise reduction. Do you share that viewpoint?

Mr. WAGENFELD. No, I don't, and I do that for two reasons. First of all, it's always a bad idea, I think, to suggest that we close the United States Patent Office. A very famous Representative of the House said that about 100 years ago.

Mr. OBERSTAR. Yes. Correct.

Mr. WAGENFELD. Secondly, there are things we don't even know about yet, but most of all, if you just look at the Space Program, set a goal and say you're going to reach it—I have an article from yesterday's Wall Street Journal where the California Air Resources Board has said, among other things, "You will have electric cars by 1998 in the State of California." Well, there's no electric car that's feasible today, and any expert will tell you that. It has huge technical problems. But our genius, again, is that we have been able to solve those problems if we have to.

For example, about five years ago, I read a big article in the New York Times about an amazing idea, that you would put external speakers on an airplane, and you would generate noise electronically that would come out of the aircraft and cancel the noise that the engines were making. Think about that. If there was a feasible way to do that, not only would it be very cheap, because what you're worried about is the noise the airplane makes when it's near the surface of the earth, not so much when it's at cruise altitude, but maybe there are four or five other ideas.

The incentive has got to be there to do it. Generally, we have seen responses by industry from regulations. Unfortunately, that's the way it is. Now, sometimes, as in my case, there has been incentive that's profit driven, and I think it can be a combination. I think it's just too glib to say we can't do any better.

For example, a Boeing 757 is clearly a Stage 3.5 aircraft, and that's what people have gotten used to. Not Stage 3 but something quite a bit quieter, very noticeable to the human ear, and we can do better, I think. It just has to have the necessary will and resources applied to it.

Mr. OBERSTAR. Therefore, a cautionary note for this committee and for the Department of Transportation and the FAA that in any aviation noise policy we not write legislation that would lock in a certain technology.

Mr. WAGENFELD. That's right. We've never done that in this field and haven't really done it in other fields. You mentioned earlier today, I think, the water type of legislation——

Mr. OBERSTAR. Water pollution.

Mr. WAGENFELD [continuing]. Where only a floor was set, and you've got that here. Miami doesn't really care that much about noise because of where Miami International Airport is located. But that's quite different from Boston Logan and so on, so there simply has to be a, shall I say, Federal minimum but either encouragement or freedom to go beyond that for local needs. Plus, I think, simply to say that we're at the end of the line technologically, I think, is wrong. Clearly that's not the case.

Mr. OBERSTAR. Are there improvements in wing and fuselage design that can be anticipated that would benefit the goal of noise reduction, or are efforts most beneficially focused on reducing noise of the engine?

Mr. WAGENFELD. No, I think, sir, it's really the engine. But a good example of what I'm talking about, as you may have seen, and I'm sure you did in the last month or two, NASA and Boeing have come up with a wing design itself, just the wing—forget the engine—which is 10 to 12 percent more fuel efficient. Many millions of little holes on top of the wing which suck air in and create a stronger and cleaner laminar flow on the wing.

Five years ago, if you had told somebody that was possible and you could get those kind of results, by that I mean someone aerodynamically educated, he would probably say he doubted it. And new wings in generations of airplanes to come will have that device on it I'm sure. It's very simple. It's a vacuum pump inside the wing which creates the suction. The idea is to smooth out the air flow on the wing, because every 1 percent of drag on an airplane is 1 percent reduction in fuel consumption.

Mr. OBERSTAR. Are there any noise abatement technologies that impose operational penalties on the aircraft?

Mr. WAGENFELD. You mean currently?

Mr. OBERSTAR. Yes.

Mr. WAGENFELD. Oh, definitely, and many of them are not safe, in my opinion. There definitely are. For example, a very steep power cutback is used in all departures from Minneapolis Airport by Stage 2 aircraft. That is perfectly safe as long as nothing happens. Because what happens is the airplane comes off the ground at, shall we say, something close to full power, and then the pilot retards power to the very minimum so that he maintains a three degree climb angle—that's the law, that's the regulation—when he coasts over south Minneapolis. This is a very effective noise device. It is not fundamentally safe, and the people that will tell you that are the pilots who fly the airplanes.

For 30-some years in New York, we've had a procedure departing from Kennedy where the airplane goes into an immediate 25 degree bank to the left to miss the towns and houses over Queens and get out over the ocean. That maneuver is perfectly safe as long as you don't lose a wing-down engine. Generally, this doesn't happen with jet aircraft, but these are fundamentally and only operational restrictions, and there are hundreds of them, all approved by the FAA. But I would quarrel with the proposition that they are all entirely safe.

Mr. OBERSTAR. Are there some technologies applied to engining, either in hushkitting or re-engining, that have operational penalties or that make operation of the engine more costly?

Mr. WAGENFELD. You mean in terms of the way you operate the aircraft?

Mr. OBERSTAR. Yes, right.

Mr. WAGENFELD. No, not generally, any more than you would have with a new aircraft. Particularly in our case where 10,000 pounds of thrust is added to the airplane. This just makes it inherently safer. When you lose an engine, you have that much more power left.

Mr. OBERSTAR. It's fair to say, then, that on the technology side, as applied to fuselage and engine, that advances in technology to reduce engine noise and air frame noise also have operational efficiencies that lower cost of operation for the aircraft, even though the cost of applying that technology, you know, has a fairly high price tag, but it does prolong the life of the aircraft and produce some operational benefits?

Mr. WAGENFELD. Yes.

Mr. OBERSTAR. There's not a net loss for the carrier to be making these improvements that reduce noise.

Mr. WAGENFELD. No, it is not. Even a hushkit, which doesn't improve the performance of the aircraft such as you're describing, is not a net loss to him, because over time he'll regain it probably from the resale value of the airplane.

Mr. OBERSTAR. Well, these are some very, very helpful thoughts, Mr. Wagenfeld. You obviously are a very effective practitioner of the art and science of your company and the re-engining and reduction of noise on aircraft, but you also have given us some very,

very keen and beneficial insights into this challenge ahead, and I thank you very much.

Mr. WAGENFELD. Thank you very much. It's my pleasure.

[Mr. Wagenfeld's prepared statement appears on p. 608.]

Mr. OBERSTAR. The subcommittee stands adjourned, to reconvene on Thursday.

[Whereupon, at 5:08 p.m., the subcommittee was adjourned, to reconvene at 9:30 a.m. on Thursday, October 4, 1990.]

PREPARED STATEMENTS OF WITNESSES

Statement of Robert J. Aaronson
President, Air Transport Association of America
Before the Committee on Public Works and Transportation
Subcommittee on Aviation
U.S. House of Representatives
October 2, 1990

Mr. Chairman, I am Robert Aaronson, President of the Air Transport Association of America. I am here today representing our airline members which collectively account for approximately 97 percent of the revenue passenger miles flown in the United States and over 95 percent of the freight ton miles. The message which I bring to you on their behalf is simple and clear -- it is imperative to the future viability of the nation's air transportation system that the United States adopt a strong and sensible national noise policy. Such a policy must take into account both the public's demand for air transportation and the public's concern for environmental and quality of life issues -- and it must balance these from a national perspective.

This national noise policy must provide, once and for all, a serious planning framework for all participants in, as well as the beneficiaries of, the national air transportation system -- the aviation and related air cargo industry, the business community, local and state governments, citizens impacted by aircraft noise, and the passenger who travels for pleasure or business. The policy must provide communities with the

necessary guidance to direct long range airport planning and development and it must establish guidance about noise measurements, airport restrictions, the phase-out of the older and noisier Stage 2 aircraft, and legal remedies including private right of action. Only a national policy will provide air carriers with a sufficiently predictable framework upon which to base their future aircraft acquisition plans.

We recognize that, while our message is clear, its implementation presents a formidable task. It will require strong leadership and cooperation between Congress and the Executive Branch to forge an effective policy that balances the financial limitations of air carriers and the demands of airport community groups.

The current confluence of events -- including the call for passenger facility charges -- presents what we believe may be a unique opportunity to fashion an effective noise policy. Let me explain where we believe the solution rests.

Noise and related environmental concerns are without question, the principal impediment to full utilization of existing airport capacity and the addition of new capacity. It is noise, not the unavailability of airport financing, that constrains airport capacity.

Without a national noise policy the carriers must cope with a proliferation of uncoordinated, often conflicting local use restrictions intended to modify noise impacts. In reality these local restrictions have a serious negative impact on airport capacity and they make planning to meet the public's demands for transportation services extremely difficult. One airport may favor curfews, another noise budgets and yet another a demand for its version of a "fair share" of Stage 3 aircraft. None of these schemes takes into account their impact on other communities -- or on the national system. In fact, while this testimony was being written, one more major airport -- Boston -- announced its intention to follow the leads of Los Angeles and the three New York area airports by proposing a local restriction guaranteed to constrain the operations of our member carriers and the capacity of this vitally important airport.

On the other side of the equation, airports seeking the addition of new capacity to meet passenger and cargo demand have confronted years of environmental objections, regulatory haggling and litigation. The absence of a national noise policy has effectively forced airports to implement their own solutions (i.e. restrictions) at the expense of the efficiency of our nation's air transportation system.

Perhaps no better example of this Catch-22 situation, where the carriers serving an airport and the community's airport leadership both want to expand the airport capacity, and are willing to commit their resources toward that expansion, is Dallas-Ft. Worth, the nation's second largest passenger airport. DFW is notable for several reasons -- it is the last major airport built in the U.S.; it is the result of a joint local and Federal effort that bridged a difficult parochial squabble between the cities of Ft. Worth and Dallas; and it has the become a major hub for two large domestic airlines and a growing international gateway. An entire region of the country has experienced record growth and development because of the DFW airport. Yet, needed capacity enhancements are being stonewalled by literally a handful of residents and towns that neighbor the airport and object to the expansion because of noise.

Collectively, the airports have now advanced the concept of local passenger facility charges as a source for capacity expansion. But money alone will not fix the airport capacity problem. Experience tells us that government must simultaneously focus on the critical role of noise as an impediment to capacity or we will see such expenditures fail to produce real airport capacity. Mr. Chairman, you and your colleagues on the Committee have devoted much energy this

session to the cause of expansion of the national aviation system. You have even gone so far as to promote a new charge on passengers - the passenger facility charge - as a source of funding for new capacity. I believe your leadership will all be for naught if Congress fails to also enact a noise policy in conjunction with this effort -- a noise policy which protects industry investments in new aircraft in an effort to accommodate capacity needs and environmental concerns.

Following that thought, I'd like to turn now to the significant role of the airlines in the reduction of aircraft noise as part of a national noise policy. As of December 1989, the United States air carriers operated some 3,915 jet powered aircraft, of which 41 percent met Stage 3 noise standards. Those Stage 3 aircraft in operation, along with orders in the pipeline, represent an investment by our members of over $175 billion in quiet technology. Local communities should not be allowed to decide their rate of replacement of older noisier aircraft in the fleet.

These older aircraft, largely Boeing 727's, Boeing 737's, and Douglas DC-9's, continue to provide nearly 60 percent of our national ai transportation services. Progress is being made to develop the technology necessary to quiet these aircraft to meet Stage 3 standards - either through

retrofitting modifications to existing engines or through the actual reengining of the aircraft. While development challenges remain for certain aircraft models, it appears technically possible that all existing Stage 2 aircraft models can be modified to meet Stage 3 noise standards. However, it is not clear that retrofitting is an economically sound course of action for all aircraft models, or for all carriers. Before determining whether to put $30 million to $140 million into a new aircraft, or $8 million into a reengining or $3 million into a retrofit, carriers must know to a certainty how they will be able to make that investment work.

Bear in mind that all these Stage 3 costs must be financed by an industry devastated by recent fuel price escalation and a slack economy. For example, the increased cost of fuel over the past eight weeks, if annualized, amounts to a $6.5 billion increase in airline operating costs. And the fuel crisis has hit us in a year when the industry is projected to lose $1.2 billion.

All of these facts lead the industry to the inescapable conclusion that a national noise policy must be implemented along the following lines:

- Currently certified Stage 3 aircraft must be permanently protected from operating restrictions of any type;

- o Any restrictions on Stage 2 aircraft should be reviewed and approved by the FAA to ensure safety, reasonableness and consistency with national policy;

- o The federal government should develop a program to assure effective land use planning and controls around airports, taking into account local government prerogatives;

- o Airports and communities sharing in the benefits of air transportation and availing themselves of Airport Improvement Program funds must conform to the national noise program;

- o Affected parties must be granted the opportunity to protect their individual interests in the noise program in court;

- o Evaluation of airport development projects must include a weighing of the local, regional and state economics and employment interests against expression of community concerns with regard to noise; and

- o In consideration of the advisability of a phase out date for Stage 2 aircraft, due regard must be given not only to noise and economics but also particularly to competition, small community air service and air fares.

Mr. Chairman, the airlines appreciate your continued leadership on these issues of importance to the nation's air transportation system. I will be pleased to respond to any questions you and the Members of the Subcommittee may have.

American Association of Airport Executives
4212 KING STREET ■ ALEXANDRIA, VIRGINIA 22302 ■ (703) 824-0500

STATEMENT OF

AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

BY

CHARLES M. BARCLAY, A.A.E.
EXECUTIVE VICE PRESIDENT
AAAE

ON

FEDERAL AVIATION NOISE POLICY

BEFORE THE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

AUGUST 2, 1990

AAAE is the professional organization that represents over 1,800 airport executives who are responsible for the planning, management, and operation of airports nationwide.

TESTIMONY OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES ON FEDERAL AVIATION NOISE POLICY BEFORE THE HOUSE AVIATION SUBCOMMITTEE, OCTOBER 2, 1990. PRESENTED BY CHARLES M. BARCLAY, A.A.E., EXECUTIVE VICE PRESIDENT OF AAAE.

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to testify on one the most critical issues facing the future of our aviation industry.

To be blunt, Mr. Chairman, the continued absence of a national noise policy will likely result in the atrophy of strategic airport capacity. And, the wrong national noise policy, one that overreaches on a federal role, will be even worse. Your leadership is needed to see that future system capacity, which this committee has worked so hard to help finance, is not frustrated by either a non-existent or counterproductive federal noise policy.

AAAE would like to concur with the excellent statement offered by AOCI. AOCI's long history of involvement in the difficult issues noise raises makes their perspective one the committee must heed in order to develop a balanced position. AAAE's perspective is likewise developed from the years of debate over noise, and includes the dimension of an executives' view of his or her profession as well as their employers' position.

AAAE's Board of Directors met just eight days ago on the matter of our association's position on noise. I personally believe that we would have also endorsed the August 22 task force position, if the airline industry representatives had not

withdrawn their agreement. I am an individual member of the task force and I voted for the plan adoption. But because of the lack of airline industry support for the compromises as detailed in the AOCI statement, the AAAE Board adopted the following, much more general, position:

1. AAAE supports the creation of a national noise policy which includes the phase out of stage 2 aircraft by December 31, 1999.

2. Any federal review process of local restrictions must first address the question of removing legal liability for potential damages from the local airport operators.

This represents the first time our organization has officially called for a national noise policy. The position's broad nature and lack of specificity is intended to protect our ability to negotiate specific policy proposals that meet these principles. But the principles are critical.

LIABILITY

Mr. Chairman, a national noise policy that does not address local liability for noise damages is no policy at all. Because of the difficulty of addressing this issue some have begun to suggest that a policy should be silent on the liability question. Such a conveniently myopic view may have political arguments to recommend it, but to obtain more than a cosmetic policy liability must be addressed directly.

Airport operators ought to be held legally liable and politically accountable for the full range of matters they control. But to wrest control while leaving liability and accountability vague is neither fair in the short run nor effective in the long run. We will aggressively oppose any national noise policy that does not make clear that airport operators are not liable when the federal government says they are not permitted to take local action.

A MEASURED NATIONAL NOISE POLICY

AAAE believes that a national noise policy that requires stage 2 phase out by the end of this century is needed to avoid the dilemma that, even if local rules are individually reasonable, the cumulative effect of numerous local rules can potentially damage an essential national system. However, we cannot emphasize strongly enough the negative impact too extreme a grab for national control will have on local capacity. Some system users, out of frustration with differing local rules, yearn for a simple federal solution -- total federal control of local flight restrictions. Unfortunately this complex problem has no simple solutions, and overreaching on federal control will result in the exact opposite of the desired effect on airport capacity.

Proposals for a national policy which would retroactively change existing restrictions, or deny all future local controls on stage 3 aircraft, would simply result in local politicians' refusal to add airport capacity when they have no say in controlling its use. Airports are owned and operated by the citizens of local governments who continue to have a substantial right to determine the nature and character of their communities. If a national

noise policy becomes a vehicle to deny reasonable local controls that don't substantially harm the national system, then the policy's ultimate result will be local intransigence on capacity additions they do control.

A properly balanced national policy will not be simple or neat. It must go to great lengths to explain the need for national coordination of local regulations that go beyond the arena of locally controlled, locally acceptable operating standards. Such a policy must define, in principle, and justify the line where interstate commerce interests must override local interests in order to maintain a national transportation system. Then individual local restrictions must be carefully measured against such a policy with the burden on proof on those who would interfere with the airport operators' decisions.

Failure to carefully balance a national noise policy, just like the failure to adopt a national noise policy, will result in an accelerating decline of available airport capacity at key locations in our country's aviation system. AAAE believes that it is time to conclude this multi-decade debate and act on a policy based upon our stated principles and the best industry consensus achievable.

CONCLUSION

Mr. Chairman, in 20 years no one will ask who among this generation of aviation's leaders and professionals had the best political arguments or made the best speeches. The only question will be did we pass on the heritage -- to build and maintain an aviation system where capacity accommodates demand -- given to us? Or, did we preside over the turning point when aviation began to solve its problems by restricting demand to fit into a system of declining capacity? No matter how good our excuses, all that really will count in the future is whether we built and protected the aviation system.

This committee has already acted to help provide the financial ability to meet the system's future capacity needs, but other obstacles to its creation and maintenance remain. Noise is the greatest such obstacle, and needs the same kind of leadership and wisdom shown by both the DOT and this committee in developing the recent reauthorization legislation.

Federico Peña
MAYOR

City and County of Denver
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Prepared Statement

of

GEORGE F. DOUGHTY
Director of Aviation
City and County of Denver

on

NATIONAL AIRCRAFT NOISE POLICY

Before the
Subcommittee on Aviation
Committee on Public Works and Transportation

U.S. House of Representatives

October 2, 1990
Washington, D. C.

Mr. Chairman and Members of the Subcommittee:

I am George F. Doughty, Director of Aviation for the City and County of Denver, Colorado. As you know, Denver owns and operates Stapleton-Denver International Airport (DEN) which since 1929 has served the airport needs of the Denver metropolitan area and the Rocky Mountain region. The City and County is also developing the new Denver International Airport (DIA) that is scheduled to open in October, 1993, replacing Stapleton, which will be converted to other purposes.

I appreciate the opportunity to testify on essential elements of a national aircraft noise abatement policy and to offer Denver's perspective on the overall relationship between local aircraft noise restrictions and airport capacity.

First, Mr. Chairman, I would like to thank you and the Subcommittee for the support you have given the new Denver International Airport project. In years past, the Subcommittee had a field hearing in Denver to take testimony on the issue of aircraft noise and airport capacity. More recently, your review and approval of DOT Secretary Skinner's Letter of Intent for $350 million in Federal Airport Improvement Program (AIP) discretionary funds for the new airport over the next decade was most helpful and is appreciated.

– Status of New Denver International Airport Construction

I am pleased to report that the new airport project is two months ahead of schedule and that construction bids to date are 17% under budget. Construction began last fall and about fourteen million cubic yards of earth have already been moved. The construction of the terminal building foundation will begin before year's end. FAA has awarded its contract for the construction of its air traffic control tower for the new facility. In terms of capital financing, the Federal Government's intent to commit substantial AIP funding has helped us secure the private financing be needed for the $1.9 billion Phase I development of the new airport. To date, $700 million in long-term bonds have been issued and an additional $200 million in variable rate bonds should be sold in the near future.

In terms of facilities, the new airport -- located on a site twice the size of the island of Manhattan -- will have five runways constructed at the time of opening, with a sixth runway to be constructed shortly thereafter and with expansion capability for another six runways. I want to assure the Subcommittee that the new airport will meet all Federal requirements for domestic and international aviation security and anti-terrorism measures. In terms of airfield capacity, the new site, with its runway configuration developed jointly with the FAA, airlines and other users, will substantially reduce aircraft operational delays at Denver and also will reduce national system delays up to 5%, particularly under IFR conditions.

On the landside, before any major Stapleton airline tenant agreed to support the new airport, Denver reduced the number of opening-day gates for the new airport from the original 1986 plan of 120 gates down to 85 gates. When Continental Airlines reached agreement with the City for its share of the new airport's capacity in March 1990, the project was expanded back to 94 gates to meet Continental's projected needs. Recently, as part of continuing negotiations, United Airlines asked Denver to provide it with 47 gates at the new airport, up from the 32 gates United now leases at Stapleton. With larger-than-expected gate requests from other airlines as well, the opening day size of the new airport has been increased to about 115 total gates, close to Denver's original projections.

-- Denver Strongly Supports PFC Concept and H.R. 5170

As you know, Mr. Chairman, the City and County of Denver has strongly supported the concept of the Passenger Facility Charge (PFC) option for local airport proprietors to finance airport capacity projects. As you may recall, the Letter of Intent negotiated with the Department of Transportation requires Denver to impose a PFC and spend those revenues on for a substantial portion of the Phase I development costs of the new airport in accordance with whatever AIP-offset formula Congress may enact. We hope that the Senate will accept something close to the House-passed H.R. 5170 in conference this year, so that Denver can use PFC revenues and other major airport communities may impose PFC charges to help finance new airport capacity.

– Relationship of Sponsor's Noise Restrictions to New Airport Capacity

You have heard the airlines' unsubstantiated arguments that "the patchwork quilt of local noise restrictions is the major impediment to increasing airport and airway capacity."

The airlines' assertion raises the central question in the current aircraft noise abatement policy debate:

> **Does an airport proprietor's right under existing law to impose restrictions on the use of its runways by noisy aircraft shrink airport capacity or enable airport capacity to be increased?**

Based on its experience, Denver is convinced that the local proprietor's retention and exercise of its current legal ability to shape the noise contours around its airport by setting local limits on aircraft operations is the only way that major increases to airport capacity – new runways, runway extensions, even new airports – will ever be approved.

Why? Under our multi-level system of government, new runways are proposed, approved and constructed as voluntary acts of local governmental airport operators. As a practical matter, local approval occurs only when a proposed runway is politically acceptable to the communities having jurisdiction over the

surrounding land. The Federal Government can't mandate new runways on locally-owned civil airports as it can on military air bases; state and local government and airport operators retain authority under our federal system.

Traditionally, the airlines' proposed solution to their aircraft scheduling problems has been to ask Congress to change the law so FAA will overrule local proprietors' decisions restricting aircraft operating hours (curfews) or establishing noise limits on aircraft types or fleets. In Denver's view, that's one sure-fire way to stop new capacity -- since communities to be affected won't allow new runways to be approved and constructed without years of wrangling and legal proceedings if those runways can't be noise-limited.

Now, some airlines are even asking Congress to prohibit an airport sponsor from generating funding for new capacity through the Passenger Facility Charge (PFC) mechanism unless that sponsor agrees not to shape its airport noise contour to community acceptability. Mr. Chairman, that's two sure-fire ways to stop new airport capacity: continue to restrict local funding and prevent the development of local consensus on new runways and new airports. We are disappointed that Senator Ford's recently introduced legislation (S. 3094) reflects this approach.

Both airline approaches are dead wrong. They're "anti-capacity" proposals generated out of understandable carrier frustration with the complexities of equipment scheduling.

Denver's success in getting new airport capacity approved reflects a much different approach. Stapleton International Airport was not expandable in large measure because its existing runways imposed continuing noise burdens on built-up communities on three sides of the airport. The Rocky Mountain Arsenal with its contaminated land was on the fourth side. Through court action by impacted communities and otherwise, Denver determined in 1985 that expanding Stapleton could not and should not be a long-term solution to reducing aircraft operational delays.

Substantial additional airport capacity for Denver and the Rocky Mountain region was made possible only because of voluntary Intergovernmental Agreements entered into between Denver and its neighboring jurisdictions. These negotiated Agreements allowed some short-term increases in Stapleton capacity if noise restrictions were adopted. Denver imposed and has in effect today a "noise budget" program that allocates a finite amount of noise-making rights to serving airlines. Carriers can use up their noise allocations with greater numbers of operations of quieter (Stage 3) aircraft or fewer numbers of noisy (Stage 2) aircraft. The airlines decide without Denver's interference how to use their noise allocations.

Even more important, Adams County approved Denver's annexation of some 45 square miles of its land for a new airport site some 18 miles from downtown Denver -- provided that Denver would control noise contours of the new airport's runways to protect neighboring citizens.

For its part, Denver negotiated adequate land for its new airport -- an area larger than the Dallas-Ft. Worth and Chicago O'Hare airports combined -- and required that additional noise buffer zones surround the new airport. Although Denver could not guarantee FAA approval of the new airport's aircraft approach and departure tracks, it agreed to use its "best efforts" to assure noise compatibility around the site. Neighboring Adams County agreed to plan and zone adjacent land to help assure future compatibility.

Mr. Chairman, Denver contractually shared its existing proprietary powers for shaping aircraft noise impacts with adjacent Adams County in order to achieve a new airport. The new airport was approved both by the local governments involved and their voters. The citizens of Adams County and Denver separately voted to approve the new airport under the terms negotiated through the Inter-governmental Agreements. This reasonable approach to achieving new airport capacity for the region and the nation would be precluded by the airlines' proposals, which are designed to override the views of noise-impacted communities.

If Congress attempts to limit airport proprietors' powers to mitigate noise, as the airlines propose, other communities needing new runways or new airports in the future may no longer be able to satisfy adjoining communities' conditions for protection of their environment. Since FAA cannot negotiate local land uses, the needed new airport capacity may well be lost.

-- Summary of Denver Noise Policy

In summary, Mr. Chairman, the attempt to force airport development on adjoining communities without their concurrence and participation won't serve anybody's purposes over the long term. It creates winners and losers when only a "win-win" negotiation between airport proprietors and their neighboring communities will result in airport capacity being increased.

The real solution to today's aircraft noise problems, in Denver's view, is for Congress and the Executive Branch to continue pressures on the airlines to expedite their transition to an all Stage 3 fleet of quieter aircraft by the earliest practicable date. The increasing cost of jet fuel may yet achieve that objective within the marketplace by 2000 without U.S. governmental intervention.

While a Stage 3 fleet will not solve every noise or capacity problem it will provide most significant improvement and will open more environmentally and politically acceptable options for increased capacity.

The Federal Government can best exercise its power by setting a national minimum fleet phaseout schedule for noisy (Stage 2) aircraft. That deadline should be one that doesn't slow down what the marketplace would otherwise achieve or prevent local airport sponsors from setting more stringent local requirements. In addition, the FAA under existing law should prohibit U.S. airlines from importing additional noisy Stage 2 aircraft that Europe won't allow to be used there. The

airlines' "non-addition" proposal is misnamed. It would allow them to purchase unlimited numbers of Europe's noisy Stage 2 discards and to add those aircraft to the U.S. fleet for up to seven years without any noise-quieting modifications. That could actually increase noise exposure around U.S. airports for most of the next decade unless airport proprietors act locally to protect their neighborhoods.

Assuming the Federal Government won't assume the financial liability for aircraft noise that local airport proprietors now endure and that FAA won't be authorized by Congress to impose new runways on civilian populations by fiat, Congress should not tie the hands of airport sponsors by limiting airport proprietor rights under existing law. They are caught in the middle attempting to achieve additional "environmentally acceptable" airport capacity.

Finally, Mr. Chairman, pejorative terms like "patchwork quilt" and "hodgepodge" may sound good on the front page of USA Today. But, have local rules really burdened airline operations or significantly restricted capacity? I do not believe such conditions have been demonstrated by the testimony presented to this Subcommittee. The airlines must prove their claim if such a major change is to be made in the traditional governmental relationships that have produced the finest system of aviation facilities in the world.

Thank you, Mr. Chairman. I would be pleased to attempt to respond to the Subcommittee's questions.

STATEMENT

OF

EDWARD J. DRISCOLL

PRESIDENT AND CHIEF EXECUTIVE OFFICER

NATIONAL AIR CARRIER ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

FEDERAL AVIATION NOISE POLICY

OCTOBER 2, 1990

Mr. Chairman, members of the Committee, I am pleased on behalf of the members of the National Air Carrier Association to have this opportunity to present our views in connection with your hearings on the Federal Aviation Noise Policy. We are pleased that you are focusing on this very important issue and trust that through these hearings and others to follow involving specific legislation the Congress will enact a federal policy on aviation noise, access to airports and environmental considerations.

GENERAL

The member carriers of the National Air Carrier Association provide both scheduled and charter service in international and domestic passenger and cargo markets. The majority of the NACA carriers are substantial participants in the existing national defense program and provide substantial capability in support of the strategic airlift capability of the United States as well as the domestic LOGAIR program. These carriers operate over 100 aircraft and employ more than 5,000 people. They operate B-747, DC-10, L-100, L-1011, B-727, DC-8 and B-707 aircraft.

In the formulation of a Federal Aviation Noise Policy it is incumbent upon the Government to recognize that the air transport industry involves many participants engaged in a wide variety of cargo and passenger activities. There are combination carriers, all-cargo carriers, charter specialists, freight forwarders,

airport operators, tour operators, travel agents and shippers -- all of which play an important role in this industry.

With regard to air carriers -- combination carriers, passenger carriers, all-cargo carriers and charter carriers -- the Federal Aviation Noise Policy should make it clear that such carriers are all essential elements of our transportation system and should state that all must be treated on an equal and nondiscriminatory basis and all must have equal access to facilities at airports and all must be considered equal partners in international undertakings. This is an extremely important element of any policy as all are recognized in the Federal Aviation Act, as amended, as air carriers under the Act and are mandated to receive equal and nondiscriminatory treatment under that Act.

Of equal importance to the above principle is the recognition within any Federal Aviation Noise Policy that size of carrier or magnitude of operation does not, in and of itself, entitle such a carrier to preferential or specialized treatment. A national policy must be based upon the premises of freedom of entry, competition and equal protection of all carriers, large or small, if we are to continue to promote a sound air transportation system responsive to the needs of the public and to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service and the national defense.

ENVIRONMENTAL CONSIDERATIONS

Environmental considerations have been used and are being used as a basis for restricting access to airports, attempting to force carriers to acquire more modern equipment or to constrain the operations of air carriers through the imposition of curfews, black-out periods, etc.

The question arises: Why is this happening? The answer is simple. It is because we do not have a federal policy and a national standard to guide the operators of airports and/or communities with regard to the needs, capabilities and economic considerations as well as defense considerations of the Nation.

There has been a fundamental failure on the part of the part of the Executive Branch of the Government as well as the Congress of the United States, to realistically address the issue of aircraft noise, access to airports and compatible land uses.

All parties are left to flounder in a sea of uncertainty resulting in self-help measures by airports adopting restrictive rules and regulations governing access, local communities demanding more restrictions while at the same time failing to address compatible uses of land within their local environment, and policy makers in Washington erroneously hiding behind an execu-

tive order on Federalism. 1/ A pre-emptive national policy which removes this uncertainty and the crazy quilt of differing state and local policies and regulations is desperately needed.

When Congress mandated the phase-out of Stage 1 aircraft, carriers accomplishing Stage 2 levels through the retrofitting process, though certified and approved by the FAA, had their operations restricted by airports imposing criteria precluding the use of that aircraft or granting preferential use to Stage 3 aircraft. They were also subjected to nighttime limitations and curfews on Stage 2 aircraft although they met Federal standards.

All of this has lead to uncertainty for air carriers, for investors, aircraft engineering companies and for manufacturers with respect to actions to be taken to retrofit aircraft to meet a Stage 3 standard and with respect to the length of time such Stage 3 standard would remain in effect.

While there are many Stage 3 aircraft operating, some airports have become selective as to which aircraft are the least noisy and are according preferential treatment to those; whereas, other airports and communities are talking about Stage 3.5 and Stage 4 aircraft which leaves the entire industry -- airport operators, manufacturers, etc. -- in a state of uncertainty.

1/ See remarks of E. Tazewell Ellett, former Chief Counsel, FAA, Discussion of Aircraft Access and Aircraft Noise, 6/12/88.

The U.S. has sat idly by refusing to recognize the imperatives of establishing "national standards" and a "national policy" and has failed to recognize that aviation operates in the world environment. This has resulted in European countries, through ECAC, establishing recommended practices such as nonaddition rules for European countries to adopt. At the same time, EEC countries are considering policies that may ban prematurely the operation of Stage 2 aircraft.

This lack of leadership on the part of the Federal Government of the United States must be corrected immediately if an otherwise chaotic condition is to be prevented. Not only must the U.S. establish a national policy with respect to noise, access to airports, compatible uses of land, etc., it must also take a leadership role which it formerly held in world aviation matters and seek through international negotiations the establishment of a world standard in order to preclude substantial impairment of U.S. interests. Foreign countries, left to consider aircraft noise and access to airports on an isolated basis could and will adopt policies which will adversely impact the interests of U.S. air carriers, both large and small.

RECOMMENDATIONS

Mr. Chairman we have specific recommendations and specific provisions that should be incorporated in a federally enacted noise policy. These are:

FIRST. Legislation should be enacted that establishes Stage 3 aircraft as the ultimate requirement on a priority basis to ensure that Stage 3, however achieved; e.g., new aircraft, re-engined aircraft or hush-kitted aircraft, are accepted without qualification by all airports on an equal and non-discriminatory basis. Such legislation should include a provision that pre-empts this area for exclusive Federal control so that states and/or communities, without prior approval of the Federal Government, cannot enact restrictions inconsistent with the Federal mandate.

SECOND. Legislation should provide for a phase-out of Stage 2 aircraft on an orderly and planned basis over a span of years -- 1991-2003 -- coupled with a non-addition rule and non-new entrant rule. Foreign carrier treatment must be based on comity and reciprocity.

THIRD. Legislation should provide for a freeze on restrictions on the operation of Stage 2 aircraft pursuant to a federal mandate implemented and enforced uniformly at all U.S. Airports. A right of private action to enable a carrier to seek redress in the courts if airports adopt restrictions inconsistent with a federal mandate should also be enacted.

Mr. Chairman, let me amplify on the provisions that we suggest. Stage 3 aircraft must be the ultimate requirement that can be imposed under the federal mandate well into the twenty-first

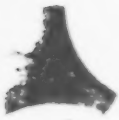
century and such federal mandate must preclude federal airports from giving preference to any Stage 3.5 or Stage 4 aircraft that may become available during that time frame. In other words, Mr. Chairman, we must have stability with regard to stages of aircraft as the air carrier industry cannot afford to re-equip its fleet or modify or re-engine aircraft at the whim of the public on airports since such action would be detrimental to the development of and operation of a sound air carrier industry.

The recommendations for a non-addition rule and non-new entrant rule for Stage 2 aircraft during the phase out period is essential in our judgement in order to restrict transfer of aircraft from one air carrier to another air carrier or to a new entrant as that could circumvent or frustrate the phase out.

CONCLUSION

In conclusion Mr. Chairman, it is essential in our judgment that legislative action with respect to aviation noise and access to airports should be considered at an early date. We trust that our suggestions and recommentaions will be part of that legislative package.

This concludes my prepared statment, I will be pleased to answer any questions you may have.



Minneapolis • Saint Paul

Prepared Statement

of

THOMAS E. HOLLORAN
Chairman
Minneapolis/St. Paul Metropolitan Airports Commission

REVIEW OF NATIONAL AIRCRAFT NOISE POLICY

before the
Subcommittee on Aviation
Committee on Public Works and Transportation

U.S. House of Representatives

October 2, 1990
Washington, D.C.

Mr. Chairman and Members of the Subcommittee:

I am Thomas E. Holloran of the Minneapolis/St. Paul Metropolitan Airports Commission (MAC). The Commission, created by the State of Minnesota, operates the Minneapolis/St. Paul International Airport (MSP) that serves the needs of the entire upper-midwest region. The Commission also owns a system of six general aviation reliever airports that serve the Twin Cities area and reduce congestion at MSP. MSP serves nearly 19 million passengers annually and is a major hub for Northwest Airlines. Under its charter and statutory authority MAC is obligated to determine the proper balance between the metropolitan area's need for adequate air transportation services, the protection of area residents from adverse environmental impacts from operations at MSP, and the protection of the Commission itself from legal liability resulting from adverse environmental impacts, including aircraft noise.

We are grateful to you, Mr. Chairman, for understanding MSP and its economic impact on the region. We salute your national leadership on the critical aviation issues of expanding and funding the capacity of the National Air Transportation System. We commend you and this Subcommittee for your forthright and constructive action in developing H.R. 5170 which was adopted by the House by an overwhelming margin. Your bill dealt with the problem of funding airport and air traffic control projects needed to expand capacity of the system during the next decade. As you know, Mr. Chairman, MAC strongly supported your efforts to find new sources to assure adequate funding.

We are also pleased you have now scheduled these hearings on another most important and timely subject, that of reviewing our existing national aircraft noise policy. Even with sufficient funding, the capacity of the system will not be adequately enhanced without solving the noise problem.

Some who want to "establish" a national noise policy are concerned with the Federal Government's existing policy because, they claim, it has allowed airport proprietors to impose too many or too harsh site-specific limitations on the operations of noisy aircraft. MAC is well aware that inappropriate and uncoordinated noise restrictions at local airports could create a patchwork quilt of regulations. We agree, however, with DOT and GAO that this problem has not had a serious adverse effect upon the operation of the national air transportation system. We feel that there are sufficient controls currently in place to avoid such interference. We need Federal leadership in a national noise policy. We need a cooperative effort to solve the interrelated problems of capacity and noise. We don't need additional Federal preemption of local noise abatement efforts. That, we feel, would be counter-productive.

In MAC's view, the DOT/FAA Policy Statement on Aviation Noise Abatement (November 18, 1976), still in effect, is at least a good starting point for expressing the proper allocation of noise abatement responsibilities among the various interests. That document was developed by the Federal Government after much internal debate and was published when the nation was transitioning from a Stage 1 (noise-unregulated) commercial aircraft fleet to an all-Stage 2 fleet. It

discusses the proper roles of the Federal Government, local governmental airport proprietors, communities around major airports, and the private airlines and aircraft manufacturers in achieving a compatible environment around our airports.

We urge your consideration of that policy paper as a good starting point as you seek to develop new public policy to complete the transition to an all-Stage 3 fleet of quieter aircraft. We hope you will include a copy in the record of these hearings.

I. MAC's Noise Abatement Programs Have Been Extensive and Effective

MAC has been in a leadership position within the aviation industry for more than two decades in a continuing effort to balance the need to enhance the capacity of MSP while reducing the impacts of aircraft noise on area citizens as much as possible. In 1969 it helped form the Metropolitan Area Sound Abatement Council (MASAC), a joint industry/citizens advisory body that carefully reviews all noise abatement options being considered for implementation by MAC. Testimony on behalf of MASAC will be offered to this Subcommittee later this week. Three years ago, rather than enact a "noise budget" ordinance at MSP, MAC negotiated voluntary agreements with the airlines to reduce noise which have resulted in a 20% reduction in average daily noise energy from the noise peak of August, 1986. Last year we renegotiated a precedent-setting "differential landing fee" with user airlines to assist in funding off-airport noise abatement and insulation programs.

$5 million has already been expended for school insulating projects on schools adjacent to the airport. MAC is convinced that negotiating with the carriers for voluntary responses rather than unilaterally adopting ordinances or regulations results in greater noise reduction, as well as reduced likelihood of litigation.

A new national noise policy should not preclude that kind of airport/airline relationship -- in fact it should build on that kind of cooperation. Of course, successful negotiations cannot occur if airport sponsors have no real power and carriers can choose to negotiate site-specific noise problems directly with the FAA.

Mr. Chairman, MAC does not mean to say that we have all the answers, or that we have solved all our noise problems. Far from it! In fact, GAO's Report to you last year on Aircraft Noise: Eight Airports' Efforts to Mitigate Noise (GAO/RCED-89-189, September 1989) indicates that, although MAC has undertaken more and a greater variety of noise mitigation actions than any of the other seven airports analyzed in that study, this has not always been perceived by our residential neighbors. While our noise-impacted population is far less than at the Chicago, Atlanta, Los Angeles and Memphis airports considered in the GAO study, the number of noise complaints received at MSP were higher than at any of the other airports studied. Earlier this year, FAA completed action on the MSP Part 150 Noise Compatibility Program and approved most program elements. We were disappointed, however, that FAA did not approve important elements of that plan that would allow restrictions of aircraft operations to achieve noise mitigation objectives, even if negotiated through airport/airline agreements.

In part because aircraft noise is a continuing problem at MSP even with cooperative land use compatibility efforts, the Minnesota Legislature has established a "dual track" airport planning process to enhance the capacity of MSP while searching for a site for a replacement airport in case one is needed. At the same time, a continuing study of traffic trends and the economic and environmental impacts of retaining MSP or moving to a new airport provides annual reports to the legislature. The Legislature will decide as early as 1997 whether to expand MSP, develop a new airport, or landbank within a specified area, hopefully with Federal airport aid, for future construction of a new airport.

Even with all of these efforts, aircraft noise around MSP continues to be of serious daily concern to many area residents and to the Commission itself. Late evening and early morning activity has recently increased, which has doubled the Ldn 65 noise exposure area to 41,000 residents. Although this makes additional dwellings eligible for sound insulation treatment, it also increases pressure for enacting nighttime noise restrictions. A local community/government/industry working group has been attempting to reach consensus on better utilization of Stage 3 aircraft at MSP, including the long-term phaseout of noisier Stage 2 aircraft at MSP and some means to restrict nighttime activity.

Currently, 30% of MSP's carrier operations are Stage 3 aircraft. Though average daily aircraft noise energy has been reduced by more than 20%, and the number of operations has been flat for the past six years, our noise contour has doubled, and noise complaints have increased from 6,000 during 1985 to over 18,000 in 1989, with a spike of 27,350 in 1988.

As a result of the perception of an increasing noise problem, public pressure has become more of an obstacle to capacity enhancement at MSP than our funding capability. As you might guess, these continuing local efforts to mitigate aircraft noise in the Twin Cities area parallel the debates in Washington, D.C., about the roles of the Federal and local governments in balancing interstate commerce, local economic development, and environmental protection.

II. Until Federal Government's Noise Policies Are Clarified, Airport Capacity Enhancement Will be Hindered and Transition to an All-Stage 3 Fleet Won't be Expedited

Mr. Chairman, as you can see, there is more that needs to be done in the Twin Cities area to mitigate noise impacts. But until the Federal Government answers the following questions after your legislative hearings and parallel hearings in the Senate on Senator Ford's new and highly controversial aircraft noise/airport financing legislation (S.3094), airport proprietors will not know their role, or their powers, nor will they know how to act appropriately:

a. Will DOT be authorized by Congress to nullify through an administrative proceeding certain noise restrictions imposed by local airport proprietors that would not be voided by Federal courts under existing law?

As you know, the airlines have proposed that DOT be allowed to review and nullify any noise restrictions that have been or will be adopted by airport proprietors on Stage 2 and Stage 3 operations and which are administratively determined to be objectionable. Under this scenario, DOT could overrule a local

noise abatement action even if the questioned restriction satisfied the legal criteria historically applied by Federal courts (i.e., airport proprietor noise restrictions must not impose an undue burden on interstate commerce, unjustly discriminate between or within classes of aircraft operators, or interfere with FAA's authority over air safety matters or airspace utilization). Senator Ford's new legislation would go further and statutorily prohibit for an unknown number of years any local restrictions on operations of Stage 3 aircraft.

Too much attention has been given to the shift in financial liability for takings involved by the Federal Government's preemptive actions over local noise rules. By preventing the airport proprietor from reducing noise impacts on nearby property, the financial liability for the "taking" of property rights would shift to Uncle Sam. Because loss of property values resulting from aircraft noise is not statutory but is protected under the U.S. Constitution, Congress couldn't legislate away that financial liability. (Senator Ford's bill recognizes and accepts that shifting of liability.)

More importantly, the aircraft noise issue does not only involve takings. There is also the overall issue of political accountability, as well as the defense costs for other types of suits related to noise. At MSP, MAC has spent millions of dollars over the last 20 years on noise-related litigation and problem solving -- not one nickel of which involved a mandatory taking because of noise. The Federal Government could not just take part of the liability -- it must take the political accountability for solving the problems. Once its nose is under the tent, the Federal Government will become a permanent resident of the entire tent.

Mr. Chairman, too little attention has been focused on the other implications of granting DOT administrative power to disapprove and nullify local noise restrictions. Because the state or local governmental airport sponsor no longer would ultimately control noise impacts around its airport, the Federal Government itself would have to address and resolve most of the local noise disputes now being mediated by the airport sponsor. Community residents would ask individual Senators and Congressmen directly to intercede with FAA to retain local noise rules. Do Congress and the FAA want to take over the responsibilities of working out the myriad local problems which hundreds of local airport officials are now spending many thousands of hours trying to resolve? I think not.

Further, if the local airport sponsor were stripped of any role in attempting to control the noise around existing runways, nearby communities would be opposed to approving any additional runways for that airport. If bureaucrats in far-off Washington, D.C., had the power to regulate the amount of permissible noise from the proposed runways, increased local opposition to new airport capacity would be certain -- because residents impacted by noise would feel they had lost any ability to make a meaningful input toward solving local noise problems. Their perceived feeling of disenfranchisement would result in fierce opposition to all or most capacity enhancement projects, and might even result in blocking more routine airport maintenance or rehabilitation projects.

Mr. Chairman, Congress could determine that the carriers' desire for flexibility in scheduling their quieter jets over their route systems is a higher

priority than the interests of noise-impacted citizens and that, accordingly, the Federal interest must be protected at Federal expense. We just want you to realize that the Federal Government would be buying the whole problem, not just the financial exposure. DOT would have to make decisions as to land use or aircraft operating restrictions and make choices between nighttime noise relief or nighttime flights by overnight express companies. As we see it, DOT decision-making would necessarily involve a very intrusive process into site-specific noise problems.

DOT and the FAA have not had a good record of responding to local noise problems on a timely basis. They simply do not have the staff to deal with the many problems arising at hundreds of airports everyday.

Until, as suggested above, this question of ultimate responsibility and accountability for aircraft noise abatement is resolved, MAC and other airport sponsors will be unable as a practical matter to fashion future noise abatement programs. They must first know what their powers will be.

Frankly, Mr. Chairman, I would submit that there is no single, simple, quick-fix solution to the noise problem. There is no universal set of rules that can possibly apply to the many different airport situations that exist in the United States today. There must be a national aircraft noise policy. The Federal Government must show leadership in developing that policy but, hopefully, it will result in a program of partnership and cooperation between the airport sponsors, DOT/FAA and the airlines, rather than an attempt to dictate noise abatement rules from Washington.

The capacity problem will not be solved without solving the noise problem.

b. Will DOT soon establish a fair phase-out schedule for Stage 2 aircraft nationally or must airport proprietors do so locally?

MAC agrees with the positions of the airlines, aircraft manufacturers and other airport sponsors that it would be most constructive and appropriate for the Federal Government to set a mandatory phase-out deadline for Stage 2 aircraft operations at U.S. airports. A Federal program would be preferable to a succession of local actions, although specific airports with serious noise problems must be allowed to set whatever tighter schedules they can justify. Further, the Federal Government must require the carriers to phase out their Stage 2 fleets nationwide according to a graduated schedule so that their actual transition to an all Stage 3 fleet on a timely basis is assured. Again, seriously noise-impacted airports could mandate a quicker phaseout schedule.

Mr. Chairman, we can't define the perfect deadline date for the phaseout of Stage 2 operations nationwide, whether by 2000 or 2003. FAA is best positioned to make that call and its statutory authority sets up the proper considerations. On one hand, MAC understands that carriers must have adequate profits to enable them to buy or lease quieter aircraft and that such profits are hard to achieve in today's market conditions. On the other hand, we feel FAA should not set a Stage 2 phaseout schedule that artificially lessens marketplace pressures to achieve fleet modernization at the earliest practicable date.

c. Will DOT limit the importation by U.S. carriers of Stage 2 aircraft being phased out of European countries or must airport proprietors deal with the local impacts of that additional noise?

Times are changing. European countries may soon require the phasing out of Stage 2 aircraft at their airports faster than the United States can afford to achieve that objective domestically. Thus there is the real possibility that noise around U.S. airports will be increased during the next decade by U.S. airline purchases of Stage 2 aircraft from Europe.

Controlling such increases in noise exposure from foreign-based sources is a highly appropriate role for the U.S. Government. Given the international nature of the problem, a Federal regulation against further importation of noisy aircraft into the United States would also be more efficient than a variety of local actions.

III. The Provisions of House-Passed H.R. 5170 Could be Endangered in a Conference Committee with Senator Ford's S. 3094.

Finally, Mr. Chairman, MAC has fully supported H.R. 5170, your Aviation Trust Fund Reauthorization/Passenger Facilitation Charge legislation that was supported by this Subcommittee and passed by the House. That your Senate counterpart has introduced any legislation containing an authorization for PFCs is a pleasant surprise. However, we are seriously concerned that the noise policy provisions in S. 3094, if sent in their present form to conference with H.R. 5170, could result in final legislation that could neutralize all of the beneficial elements of your legislation.

Although the provisions of the Senate bill hold out the tempting morsel of having the Federal Government assume financial liabilitiy for "takings" resulting from preempting local noise rules, we are frankly skeptical that this will be enacted into law. The issue involves more than takings. There is also the political accountability. There are defense costs for other lawsuits related to noise. At MSP, MAC has spent millions of dollars over the past 20 years on noise-related litigation and problem solving. Not one nickel was spent for a mandatory taking because of noise. The Federal Government cannot just take part of the liability. It may be taking on more than it wants to chew.

The Senate bill would immediately limit, by statute, the actions airports could take to attempt to control noise, while holding out the possibility of a Stage 2 phaseout date and the promise of Federal assumption of liability. It contains the enticing potential of allowing airports to levy Passenger Facility Charges, but only if the airport abandons unapproved noise restrictions presently in place or contemplated in the future.

It is critically important to us that MAC not lose its ability to solve its local noise problems unless the Federal Government takes over that responsibility completely and competently. No level of new capital financing capability, no matter how adequate, would be effective if MAC loses the ability to convince our constituents that new airport capacity will be needed in the metropolitan area and should be approved by them.

I reiterate, the problem of capacity enhancement will not be solved until and unless the noise problem is adequately dealt with. The capacity problem will be greatly exacerbated if airport proprietors lose their ability to participate in controlling local noise problems.

Thank you. I would be pleased to answer any questions you may have.

STATEMENT OF GEORGE P. HOWARD, PRESIDENT

AIRPORT OPERATORS COUNCIL INTERNATIONAL

BEFORE THE HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE

SUBCOMMITTEE ON AVIATION

CONCERNING AVIATION NOISE

OCTOBER 2, 1990.

Mr. Chairman and Members of the Subcommittee:

We commend you for holding this hearing on aviation noise. Noise is a pervasive, multifaceted issue which has defied resolution for many years. It has a tremendous impact on airport capacity, and, in fact, plays a large role in determining community attitudes towards airports. Much of the difficulty in building new airports and expanding existing airports in this country is due to the concerns communities have about aircraft noise.

This subcommittee is well aware of the benefits airports provide to their communities beyond providing their citizens and businesses access to the national air transportation system. Airports provide direct employment and economic activity, and create attractive places for businesses to locate, thereby multiplying these economic benefits. However, those who live near airports and are most affected by aircraft noise are not assuaged by these general benefits. Thus, the public is often disturbed by the prospect of aviation noise, and opposes airport development or expansion.

Airports realize that we have an obligation to be good neighbors, to take steps to mitigate the impacts of noise where this is possible. Such actions are in our self-interest because we need public support, instead of opposition, if we are going to be able to build and expand our facilities to meet the growing demand for them. Increasing airport capacity is crucial to reducing delays and increasing competition--both of which will greatly benefit air travelers and our economy.

On that score, Mr. Chairman, I would like to take this opportunity to publicly thank you and the Ranking Member, Mr. Clinger, as well as other members of the Subcommittee--particularly Mr. De Fazio and Mr. Lipinski--for your tenacious efforts which resulted in the House passing PFC legislation. If we obtain Senate concurrence, this will allow airports to get moving on the $50 billion in capital improvements we need to make over the next 5 years. Airports throughout the country salute you. Many of the important projects that need to be funded by PFC's will involve noise mitigation, which will serve to increase airport capacity and efficiency. However, we also need federal leadership and a national noise policy.

AOCI Recommendations for a National Noise Policy

AOCI's position on noise has been consistent. In March of

last year, we submitted our views in response to FAA's request for comments on aircraft fleet modernization. In it we stated that:

"Airport proprietors faced with the legal consequences of aircraft noise have the right on behalf of their community to develop noise abatement plans for areas within the proprietor's authority. In particular, airport proprietors must have the authority to undertake at least the following actions:

- o establish procedures and restrictions for control of airport noise, consistent with federal and local law;

- o establish uniform and non-prejudiced restrictions on the time of day and type of aircraft that may use an airport; and

- o institute voluntary local noise abatement planning efforts designed to ensure the greatest amount of noise relief available and encourage cooperative community involvement in generating compatible land use in airport environs."

Regarding the phase-out of Stage 2 aircraft, we urged the immediate establishment of a U.S. federal program with the following elements as a minimum:

a. Establish a cut-off as of the end of the year for final registration or importation of Stage 2 aircraft into the United States, or such later date as to assure the availability of certified hush kits or retrofit kits for each applicable Stage 2 aircraft type.

b. Establish a phase-out schedule and final cut off date for operation of all Stage 2 aircraft of no later than December 31, 1999. Require each air carrier to submit a phase out schedule for its fleet to FAA by December 31, 1992, with appropriate review and comment by the general public. The schedule should show how the carrier will meet the deadline, with the number of aircraft it expects to remove as of the end of 1994 and 1997. The FAA shall determine that the phase-out rate submitted provides reasonable progress toward the December 31, 1999 deadline as a condition of approval of the carrier's phase-out schedule; and

c. An airport operator may choose to permit continued operation of aircraft not meeting Stage 3 requirements where the airport operator determines such action to be in the best interest of the community it serves. However, the decision of an individual airport to permit such Stage 2 operations should apply only to that airport, and should not imply that such aircraft may be

operated at any other airport which applies the cutoff date of December 31, 1999.

Industry Consensus on a Federal Noise Policy

Our Board of Directors reviewed this policy in June and reaffirmed it. We apprised Secretary Skinner of our views by letter on July 19. This is still the policy AOCI would like to see adopted. Yet we recognize that there are other segments of the aviation industry whose views deserve to be considered in the development of a national policy. To that end, AOCI has participated in government/industry task forces that have focused on solutions to the aviation noise problem.

As you know, the Noise Working Group of the Industry Task Force on Airport Capacity and Delay Reduction labored hard for two years and ultimately recommended the famous "three-legged stool" approach: combining a Stage 2 Phase-out by the end of 1999; a ban on new local noise rules, coupled with federal assumption of noise liability; and a strong land use planning program to protect against incompatible development backed up by denial of federal funds for communities which do not comply.

This approach was not adopted by the federal government. Many of us were disappointed when the National Transportation Policy

merely described the noise problem, albeit eloquently, without putting forth solutions. It did state explicitly that "It is Federal transportation policy to facilitate the orderly and expeditious phase out of Stage 2 commercial aircraft without the use of federal funds." However, it did not flesh out this broad policy with a specific proposal or timeframe.

In a further effort to reach industry consensus on noise, the Aviation System Capacity Task Force set up a Noise Working Group chaired by Charles Bautz of Delta Airlines. Building on the working group's foundation, the full Task Force, on August 22, reached agreement on a set of principles and achieved broad consensus on a series of specific recommendations.

These principles, which represent a compromise on the part of all parties, include the following:

1) A national Stage 2 phase-out date of 2003, with airports having the option of imposing an earlier phase-out, as of the year 2000, at their facilities;
2) A federal review and approval process for all proposed new local restrictions on Stage 3 aircraft, with the federal government assuming liability for noise damages arising from an airport's inability to impose a restriction disapproved by DOT;
3) A non-addition rule that permits certain Stage 2 aircraft to be imported into the United States but requires those

brought in before 1995 to be modified to achieve Stage 3 status before 1997, and those imported in 1995, 1996 or 1997 to be modified by the end of 1997.

4) Establishment of locally controlled, compatible land use programs, with appropriate incentives to encourage fulfillment of the programs. Airports would also define the Airport Land Use area based on the 65 Ldn contour, assuming all Stage 3 operations, along with known airport development plans and other appropriate influences. The program goal would be to protect this area to the extent possible, with measures such as compatible zoning, noise easements, land acquisition, and soundproofing.

At the time of the August 22, meeting it was made clear that not every airline would support this approach, just as not every airport would support it. However, it is as close to an industry consensus as we have been able to achieve after years of wrestling with the problem. Since the meeting, Chairman Bautz has reported that certain airline members, including some represented at the meeting, are now expressing concern to certain aspects of this agreement. AOCI is not backing away from the consensus the task force reached at the meeting. We are still committed to it--as a reasonable compromise and sound public policy which takes into account the interests of all parties.

I should emphasize that not all of our airport members agree to this even as a compromise; you may very well hear from some of

those who disagree. On the whole, however, our members believe we can support it as part of an effort to get a national noise policy into place. You will note that it deviates substantially from our preferred position, and we believe we have made significant compromises in a number of areas.

The deadline for a national phase-out has slipped 4 years, from December 31, 1999 to December 31, 2003, although individual airports who need it would have a federally protected option to impose an earlier deadline--as early as December 31, 1999. This will shift some of the "heat" to local airports, who will have to take the initiative to act before the federal government deadline kicks in. Quite frankly, some airports do not relish the prospect of being the focus of the phase-out/anti-phaseout debate and believe that the federal government should assume responsibility for the earlier date. Yet on balance the compromise offered by the Task Force on August 22, is acceptable.

Federal Review of Local Noise Restrictions and Liability

AOCI has also agreed to the concept of federal review and approval of all new local restrictions on Stage 3 aircraft, as long as the federal government assumes liability for damages resulting from an airport's inability to impose a specific restriction disapproved by DOT. The noise working group felt that the

government would need to conduct such reviews expeditiously, so that they would not turn into de facto "vetoes" because of delays. Also, existing Stage 3 restrictions could remain in effect and would not be subject to this review.

Giving the federal government veto power over proposed new Stage 3 restrictions is a significant concession by airport operators. Currently, as you know, if the FAA disagrees with an airport's proposed regulation, its options are to "jawbone" the airport to get "voluntary" compliance with FAA's position, or to sue the airport, and let a court decide the issue. Nonetheless, we are willing to accept the proposal, which gives carriers considerable protection by ensuring that their Stage 3 fleets will be subject to new restrictions only if they are approved by the federal government. FAA has historically been more concerned with the impact of restrictions on the national air transportation system than with the impact of noise on local communities.

If an airport is prevented from enacting a Stage 3 restriction because DOT disapproves it, fairness and equity require that the airport not be liable for any damages that result from its inability to impose it and protect the surrounding community from noise. It is both fair and equitable that the federal government assume any liability that arises in this narrow set of circumstances. For those in the government who are concerned with the potential for unlimited liability, we point out that federal

liability will occur only if the government takes action to disapprove an airport's proposed regulation. Since there would be no federal review or disapproval for Stage 2 restrictions, there is no federal liability associated with the failure of an airport to restrict Stage 2 aircraft. Since these are the noisiest aircraft currently operating, their operation is far more likely to generate noise suits and damages than Stage 3 aircraft.

If the federal government approves an airport-proposed Stage 3 restriction, no federal liability would arise. Thus, the federal government itself would determine the scope of the liability it would incur, because it would decide the extent to which a restriction on Stage 3 aircraft could be imposed. As discussed in the Noise Working Group, DOT would not be limited to a simple "Yes" or "No" in its review of a proposed Stage 3 restriction. Otherwise, an airport could theoretically propose a sweeping restriction on Stage 3 aircraft, with full knowledge that it would never pass federal muster, and then say, "Thank you very much for assuming all of our noise liability," when it was in fact vetoed by DOT. Under the proposal, the federal government could say, "You can't do X, but you can do Y," and thus limit its liability by eliminating damages that would have occurred if restriction Y were not allowed.

Thus, there would be a balance between the federal government's desire to limit its liability and its role in

promoting the growth of the national air transportation system. Requiring the government to weigh these competing factors is most likely to lead to rational, balanced decisions by DOT.

Our original position on a non-addition rule was that no new Stage 2 aircraft should be allowed into the U.S. after December 31, 1989. Obviously, we have had to update that recommendation, and our letter to the Secretary proposes December 31, 1990 as the importation cutoff. However, we recognize the legitimate concerns of segments of the air carrier industry, particularly the air cargo industry, that they be allowed to grow between now and the ultimate cutoff date. We further recognize that the addition of Stage 2 aircraft for a brief time may be necessary. Therefore, we can accept--as a compromise--the Task Force language put forward by the air freight industry which allows the importation of Stage 2 aircraft, but requires aircraft brought in before the end of 1994 to be modified to Stage 3 status by the end of 1996, and aircraft imported in 1995-1997 to be modified by the end of 1997. Aircraft could not be brought in after 1997 unless they meet Stage 3 standards.

A Federal Noise Policy is Needed Now

We emphasize again that the August 22 Task Force consensus represents a compromise on the part of all parties, including

airports. It should not be viewed as a starting point for compromise with those who have now chosen to back away from the agreement, retreating into positions closer to their own individual preferred positions.

A federal policy, as important as it is, will not be a panacea that eliminates all noise problems. The local airport proprietor, who is part of the community that receives the economic benefits and bears the brunt of the environmental burdens of the operation of the airport, is in a position to balance each of these factors. Proprietors must have the opportunity, subject to the review process noted above, to tailor noise restrictions to the unique circumstances of the facilities they operate.

What do we have to look forward to if we do not establish a strong federal noise policy? The noise issue won't go away merely because the federal government doesn't address it. Individual airports will continue to be faced with the need to address their local communities' concerns. Recent actions, such as the proposed Stage 2 Phase-out at Los Angeles, the nighttime noise rule imposed by the Port Authority of New York and New Jersey, and the proposed Stage 2 phase-out announced by the Metropolitan Washington Airports Authority, have been taken at least in part because there is no effective national policy. The continued absence of a federal policy will undoubtedly result in more airports taking individual action. We are aware of the continuing complaint of air carriers

that the proliferation of local rules results in a "patchwork quilt" of regulations across the country, which makes it difficult for them to schedule flights and equipment throughout their route structure. However, in the absence of federal action a number of airports will be compelled to protect themselves and their communities from the noise of Stage 2 aircraft through a local phase-out.

We have heard rumblings that the issuance of a federal noise policy is imminent, but we have not seen it. We hope the fact that you are holding these hearings will stimulate the federal government to develop a policy. We understand that Secretary Skinner is anxious to act in this area, and any assistance that you can give him would be appreciated. Adding urgency to the need to develop an administration position is the fact that ICAO has scheduled a Special Assembly on noise in late October; if the U.S. government does not have a cohesive position to advance, it will be a mere bystander at a meeting dominated by the others, who <u>will</u> have a firm position to offer.

Despite the difficulties and complexities which underlie the noise issue, we have made considerable progress over the past few years. We urge the federal government to adopt the Task Force approach and to use it as the basis for developing a national position to be advanced at ICAO and in other world forums. The continued vitality of the aviation industry depends on our

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addressing the noise issue in a cohesive, comprehensive manner, so that all segments of the industry can know what the federal rules will be and can plan accordingly.

Mr. Chairman, that concludes my statement. I would be pleased to respond to any questions you and other members of Subcommittee may have.

Thank you.

STATEMENT OF DALE E. McDANIEL, DEPUTY ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING AND INTERNATIONAL AVIATION, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION, CONCERNING AVIATION NOISE. OCTOBER 2, 1990.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss for you our overall efforts to reduce aircraft noise. The Department of Transportation and the FAA recognize that aircraft noise is a significant concern in many communities throughout the United States. These concerns also pose an equally significant concern for the Nation's aviation system.

Our aviation system is an increasingly important part of our national economy. Eighty-seven percent of all domestic passenger air travel in 1989 was interstate and virtually all overnight air cargo shipments moved in interstate commerce. Aviation now contributes 5.6 percent of our Nation's GNP and 1 out of every 14 civilian jobs in the United States is dependent on the aviation industry. In addition, the aviation system is an international system that supports and assists United States' business to compete in the global economy. Demand for U.S. domestic air travel alone is projected to increase by at least 60 percent by the year 2000 and domestic and international air cargo shipments are expected to increase 340 percent during the same period.

The aviation system's ability to respond to this demand has been

seriously affected by the reactions of local communities to aircraft noise. Local communities have been successful in pressuring airport operators to impose operating restrictions on existing facilities as well as opposing proposed airport expansions or development of new airports. By our count, 47 major airport capacity enhancing projects were either stopped, altered, or significantly delayed as a result of noise concerns.

We are concerned that these noise constraints threaten the ability of the aviation system to respond to present and future demands. At the same time, we recognize that these operating restrictions represent a response to genuine noise concerns. We estimate that 3 million people currently reside in areas where noise levels exceed the standard for compatible land use.

Some have suggested that the noise problem exists because the Federal government has not acted. I disagree. The 3 million residents in serious noise impact areas are far fewer than the 7 million living in such areas in the mid-1970s. We believe that by the year 2010 there will be just over 1.1 million persons living in serious noise impact areas. These dramatic gains result almost exclusively from the introduction of quieter aircraft. We completed the phaseout of the noisiest, Stage 1, aircraft in 1986. That resulted from a decision taken by the Federal government in 1986. Shortly after that, in 1977, the Federal

government mandated that all newly certificated designs must meet even more stringent Stage 3 standards. As a result, the aviation industry is well underway in converting the fleet from Stage 2 to Stage 3. Currently 40 percent of the U.S. civil fleet is Stage 3. When an all Stage 3 fleet is achieved existing technology will have been exhausted. That technology was developed was developed in FAA and NASA supported programs ten to twenty-five years ago. There is no proven technology to achieve substantial additional aircraft noise reduction and this creates a significant problem in achieving further progress.

Secretary Skinner has pledged Federal leadership in finding and implementing workable solutions in achieving progress and we are moving aggressively in several areas. They are:

1. Continue research to identify new technology to reduce aircraft noise;
2. Improving compatible land use;
3. Review concerns with the standard noise metric;
4. Implementation of new procedures to screen the environmental impact of air traffic changes above 3,000 feet; and
5. Strenghten FAA emphasis on environmental concerns.

I would like to briefly address our work in each of these areas for you. With respect to new technology, Administrator Busey and

NASA Administrator Truly have recently agreed to develop a cooperative aircraft noise reduction technology development program. In addition, we have additionally created a noise subcommittee of our R,E&D Advisory Committee. While we will continue to work with NASA and others, it should be made clear that it will not be easy to develop significantly quieter aircraft engines. Further noise reduction is technically a very difficult challenge. However, most experts agree that significant results are attainable. Realistically, even if research proves successful, we cannot expect quieter aircraft until well into the next century.

That leads to our work regarding compatible land use. Communities must find new and creative ways to manage better the land use around airports, while avoiding operational constraints which limit the capacity of existing airports and threaten our ability to add to new capacity. We will work with impacted communities and industry to encourage development of local tools for ensuring compatible land use. We will also work with local communities and airport users to deter local actions that are unreasonable, arbitrary, discriminatory, or undo burden on interstate commerce or otherwise unreasonably interfere with system efficiency or increase system cost.

Since the authorization of the Airport Improvement Program (AIP) in 1982, over $26.3 million has been granted to airport sponsors

to develop noise compatibility plans and $848.6 million to carry out recommendations in those plans. As you know, under AIP, a minimum of 10 percent of available funds is set aside for noise compatibility planning and program implementation. The largest share of these funds is used for acquiring noise impacted land adjacent to airports. The other major implementation strategy is soundproofing of schools and residences.

We are also aware that not everyone is satisfied with the existing standard method of measuring noise impact. As you will recall, that metric, day-night average sound level or DNL was developed in response to the 1979 Aviation Safety and Noise Abatement Act. In recent years, the adequacy of this metric has been challenged by some communities.

As a result of the concern, FAA and EPA have agreed to a joint project to evaluate the DNL metric. In addition, FAA Deputy Administrator Barry Harris and EPA Deputy Administrator Henry Habicht have agreed to work with DOD, VA, HUD, CEQ and the Department of Justice to examine our policy with regard to a number of other concerns regarding the noise impact of aviation. They are:

- o the extent of impacts outside 65 Ldn that should be reviewed in an environmental impact statement;

- o the manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- o the manner in which noise impacts are described;
- o the range of FAA-controlled mitigation options (noise abatement and flight track procedures) that are analyzed; and
- o the relationship of the Airport Noise Compatibility Program (Part 150 process) to the Environmental Impact Statement (EIS) process, including ramifications to the EIS process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

While the DNL metric has been criticized, we believe it is the best available indicator of aviation noise annoyance. It has proven remarkably successful since being adopted ten years ago as the national standard. If there are changes to that standard which would improve its usefulness, we would certainly support them. It should be made clear, however, that we will not move away from a standard approach to a series of different measures at individual airports.

We believe that many of the criticisms of the standard noise metric are in reality criticisms that not everyone who is annoyed by aviation noise lives within the 65 Ldn contours. That leads to our fourth activity on new screening procedures.

In recent months, the FAA has become increasingly aware that there are situations where noise levels outside of the Ldn 65 contour may create considerable controversy. This was certainly the case with regard to our Expanded East Coast Plan. We seriously underestimated the reaction to air route changes which have significantly improved the efficiency of New York area airports. Considerable time and effort are now being devoted to mitigating those effects as much as possible, although it is clear that once a negative reaction to noise has been created it is virtually impossible to recover.

We hope to avoid the New Jersey experience in the future. To assist in this, two weeks ago we issued additional guidance in assessing increases in aviation noise exposure to air traffic changes above 3,000 feet. This guidance is built on the premise that regardless of the ambient noise level, a sudden, sharp increase in that level may cause considerable adverse public reaction. It will be used by FAA in planning future route changes and will help to minimize noise impact.

In addition to these operational measures, FAA has issued internal guidance regarding management of environmental responsibilities. This guidance signifies an important first step in building a strong environmental reputation for the FAA. It initiates changes designed to heighten the agency's sensitivity to environmental concerns from planning through implementation.

I recognize that the Federal government's past record and our recent initiatives leave unanswered a number of questions of interest to this Subcommittee. Such questions as facilitating the orderly and expeditious phase out of Stage 2 commercial aircraft, and avoiding capacity limiting restrictions are difficult policy issues. While these and related issues are of considerable interest to the Administration, we have not concluded our own deliberations on what, if any, additional Federal initiatives may be desirable. Mr. Chairman, we commend you for providing a forum for a public discussion of these issues and believe they will be helpful in shaping our own views.

Mr. Chairman, that concludes my prepared statement and I would be pleased to answer any questions you may have.

STATEMENT OF

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ON

GOVERNMENT POLICIES ON
AIRCRAFT NOISE

BEFORE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION

James P. Muldoon,
General Manager
Aviation Technical Services Division
The Port Authority of New York and New Jersey
One World Trade Center/Room 65 East
New York, New York 10048

October 2, 1990

Good afternoon. I am James P. Muldoon, Manager of Aviation Technical Services at the Port Authority of Nev York and Nev Jersey. The Port Authority of Nev York and Nev Jersey appreciates the opportunity to appear before the Subcommittee to express our views on the pressing need to establish a national program to phase out noisy Stage 2 aircraft, thereby reducing the impact of aircraft operations on communities near the nation's major airports.

The Port Authority is responsible for operating the Nev York-Nev Jersey metropolitan area's major airports which include John F. Kennedy International, Nevark International and LaGuardia Airports. Last year, these airports served over 74 million passengers; almost 22 million traveling to or from overseas destinations. These passengers represented 5.5 percent of the total United States domestic and 28 percent of the total U.S. overseas traffic. Our airports are served by over 100 U.S. and foreign flag air carriers providing service to 150 cities with a total of 15,000 nonstop flights per veek. Unfortunately, the statistics as far as aircraft noise impact is concerned, are equally large.

An analysis, produced by the Federal Aviation Administration in the late 1970s, indicated that aircraft operations at our three airports affected over two million people, roughly one-third of the total noise impacted population in the United States at that time. Since then the number of people living within our noise impact contours has been reduced by almost 1.5 million by the elimination of the noisiest non-certificated Stage 1 aircraft. We estimate, hovever, that the nov almost 630,000 people

living in communities around our three airports still represent one-third of the total noise impacted population in the United States.

Aircraft noise is nov recognized by virtually everyone as the most critical impediment to the expansion of the air transportation system. Community reaction to aircraft noise prevents the establishment of more efficient flight paths, the expansion of airports and the development of nev airports, without which the system will soon run out of capacity and projected demand will not be realized. In addition, the noise problem is no longer confined to the areas immediately adjacent to major airports, but is nov generating community unrest in areas many miles from the airport. This can be seen in locations such Northern Nev Jersey and in Seattle, where air-route changes have exposed distant communities to nev or a significantly increased frequency of aircraft overflight.

The Port Authority has long been a leader in the fight against aircraft noise beginning in the early 1960s with our single event noise limit and going right through the 1980s with our cumulative noise rule mandating the early phase-out of Stage 1 aircraft at our airports. Just recently, ve enacted a nighttime noise rule prohibiting the addition of Stage 2 aircraft during the noise sensitive late night hours. Although the Port Authority and other airport operators have had varying degrees of success in reducing the impact of aircraft noise on surrounding communities, with a variety of local measures, the only truly satisfactory solution to the aircraft noise problem is source noise control, i.e., reducing the noise generated by individual aircraft operations, to the extent technically and economically practical, using available technology.

Aircraft and engine technology has improved greatly from the introduction of the first jet transports in the late 1950s. Aircraft being produced today are significantly quieter and far more fuel efficient than their predecessors.

As the Subcommittee is aware, the first generation of jet aircraft, which were produced without a requirement to meet any noise certification standards, and which are referred to as Stage 1 aircraft, were phased out of the civil fleet based on the requirements of the Aviation Safety and Noise Abatement Act of 1979. The ensuing Federal Regulations established a phase-out schedule and ended the operation of virtually all of these aircraft in the United States on January 1, 1985.

However, the next generation of aircraft, which were manufactured to meet minimum noise certification standards, referred to as Stage 2 aircraft, continue to operate in the United States without any phase-out schedule. These include the B-727, DC-9 and early versions of the B-737. Based upon the Federal Aviation Administration's Report to Congress, in August 1989, the total United States Stage 2 fleet represents approximately 2,300 aircraft. In the viev of virtually all industry observers, as well as community representatives concerned with aircraft noise, these unregulated aircraft represent the most critical aspect of the aircraft noise problem in the United States.

At this point, the difference between the U.S. and Western European treatment of these aircraft must be noted. Effective next month, Stage 2 aircraft cannot be added to the registry of any of the Council of European Communities member states. They can, however, be exported into the U.S. and, without restriction, added to the fleet of any U.S. airline. In addition, as we speak, the European Parliament has under consideration a recommendation that would ban the operation of any of these aircraft more than 25 years old in 1995 and ban operations of all such aircraft regardless of age in the year 2002. With the non-registration rule already in place and the operation ban or a variation thereof soon to be imposed, the U.S., Eastern Europe, and a group of Third World nations will be the only areas which will permit the registration and eventually the operation of these aircraft.

The latest generation of aircraft, referred to as Stage 3 are for the most part powered by high-bypass engines and are far quieter and fuel efficient than their predecessors. These include the Boeing 757 and 767, the DC-10 and the A300. There are presently about 1,600 of these aircraft in the U.S. registry and with an additional 1,110 on order by U.S. airlines. These aircraft, supplemented by the hush-kitted versions of a number of recently manufactured Stage 2 aircraft, can well satisfy all of the need for civil aviation without the retention of older Stage 2 aircraft.

The retirement of Stage 2 aircraft from the United States fleet or their upgrading to Stage 3 standards will, in our view, have a significant impact on mitigating the blight of aircraft noise on communities surrounding major U.S. airports. Although the National Transportation policy issued earlier this year stated that it is a Federal policy to facilitate the orderly and expeditious phase out of Stage 2 commercial aircraft without the use of Federal funds, the Federal Aviation Administration has failed to propose a phase-out schedule. Consequently, it is our recommendation that Congress take the initiative and mandate the phase out of Stage 2 aircraft from the United States fleet in an orderly manner with a total ban on the operation of these aircraft, effective December 31, 1999. I might note that the Airport Operators Council International (AOCI) has also called for the banning of Stage 2 aircraft effective December 31, 1999.

The failure to quickly establish a phase-out program will have the undesirable consequence, from a national perspective, of leading to the dumping of aircraft unable to be registered or to operate in Europe into the U.S. registry. Furthermore, individual airport operators such as the Port Authority will have no choice but to expand existing local aircraft noise regulations. As you know, Senators Bradley and Lautenberg and other members from our region have called for enactment of a national noise policy and a stage 2 phase-out program, which our Chairman Richard Leone has publicly supported. Moreover, the Senators specifically have called on the Port Authority to take a proactive stance on the policy and phase out. This we have said we will do. The Board of Commissioners of the Port Authority has directed staff to evaluate the feasibility (including

economic impact) of a local rule that will phase these aircraft out of operation at our airports with or without a national rule. We expect, after receiving public input, to present a specific recommendation to our Board by the end of this year. I should note that to some degree the noise problems of every airport are unique. As such it is important for Congress, in adopting a national phase-out program, to continue to preserve in law local airport proprietor's rights to enact reasonable, non-discriminatory noise regulations which respond to legitimate community concerns and protect airports against liability for noise damages.

Again, thank you for the opportunity to present our views on this critical issue. I would be pleased to answer any question the subcommittee might have.

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Testimony of
ROBERT E. WAGENFELD
President
VALSAN PARTNERS
before the
AVIATION SUBCOMMITTEE
of the
HOUSE COMMITTEE ON PUBLIC WORKS AND
TRANSPORTATION
October 2, 1990

Mr. Chairman and Members of the Subcommittee, Valsan Partners appreciates this opportunity to testify before you today.

In the testimony you heard earlier in these hearings, the burgeoning problem of airport noise has been defined dramatically for you. At this point, I would like to tell you about one solution that is currently available - one that will enable a significant number of aircraft in the United States carriers' fleet to meet Stage 3 requirements in an economic manner.

For the past decade, the 727 has been the backbone of our domestic carriers' fleet. Today over 1150 727's are in service in the United States alone. When I testified before this Subcommittee in July 1986, I promised the development of a re-engining modification to convert the 727 aircraft to Stage 3 compliance. In 1988 Valsan received an FAA Supplemental Type Certificate for such re-engining of the 727-200 aircraft. This year Valsan's Supplemental Type

Certificate was extended to include the re-engining of the 727-100 aircraft. In re-engining the 727 aircraft, Valsan is replacing the two outboard engines with high-bypass Pratt & Whitney JT8D-217/219 engines and installing an exhaust mixer and acoustic tailpipe in the center engine.

In today's intensely competitive airline industry, airlines expect aircraft modification to be multi-functional. In addition to noise abatement, the airlines are interested in increased fuel efficiency and improved performance in their aircraft. With the addition of 10,000 pounds of thrust with quiet, fuel efficient engines, Valsan is offering deep Stage 3 noise compliance, substantial fuel savings and improved performance. The re-engined aircraft has a 10% to 12% fuel improvement, a range extension of 300 nautical miles from sea level and up to 1,000 nautical miles from Denver during hot weather and a reduction in the minimum field length of 17%.

The resulting noise reduction is dramatic. The heaviest and highest powered 727-200 aircraft will, through re-engining, meet Stage 3, without trade allowances. Re-engined 727 aircraft with lesser weights have noise profiles which place them considerably deeper into Stage 3.

Valsan delivered the first re-engined aircraft to Sterling Airways, a Danish carrier, in October 1988. Sterling has now operated the aircraft for nearly two years

without encountering any difficulties. Twelve 727 aircraft have now been re-engined by Valsan.

The FAA's 1986 Report to Congress on Fleet Modernization forecast that the U.S. fleet of 727 aircraft, which numbered 1188 in 1985, would reduce to 917 in 1990. Historically the retirement of aircraft from the U.S. fleet has been slower than predicted and the 727 is a case in point. Today there are 1157 727 aircraft in the U.S. fleet, representing a reduction since 1985 of only 31 aircraft, rather than the 271 retirements predicted by the FAA.

Valsan has the production capacity for at least eight re-enginings per month, using modification centers in different parts of the country. If Valsan's production were dedicated to the U.S. fleet of Stage 2 727 aircraft, Valsan alone could convert most of the fleet to Stage 3 during this decade. To the extent that the announced capacity of other retrofit companies is fully used in the effort, the conversion can be completed within five or six years.

Airline Capital Associates of New York has studied the likely timetable and cost for the Stage 3 conversion of all Stage 2, narrowbody aircraft in the U.S. fleet. Based on the publicized reports of the projected capacity and pricing for hushkits and re-enginings, the U.S. narrowbody Stage 2 fleet can be converted to Stage 3 before 2000 - meeting meaningful phaseout waypoints and at an incremental

cost to the carrier of less than $1,000,000 per aircraft. In making their study, Airline Capital Associates used the same assumptions as were used by American Airlines in its study - "Economics of Stage 2 Aircraft Replacement" - presented in July 1988.

Past experience shows that the purchase of new equipment seldom removes the older aircraft from the fleets of the U.S. carriers. Recognizing this fact, the FAA Reports to Congress on Fleet Modernization have included alternatives which would provide special benefits when a Stage 3 aircraft replaces a Stage 2 aircraft which is then removed from the U.S. Registry. Valsan's Program accomplishes this by converting existing Stage 2 aircraft to Stage 3. In your consideration of solutions for the nation's noise problems, we urge that incentives be developed which would induce carriers to add Stage 3 equipment under circumstances where Stage 2 equipment is being converted or removed from the domestic fleet.

In conclusion, Valsan believes that its re-engining of the 727 aircraft is workable and practical both from the standpoint of complying with strict noise restrictions and meeting the carriers' financial and operational needs. In short, Valsan's re-engining provides a viable and economic solution to community, industry and Federal concerns.

FEDERAL AVIATION NOISE POLICY

THURSDAY, OCTOBER 4, 1990

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 11:45 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. OBERSTAR. The Subcommittee on Aviation will please come to order.

Our process here in this subcommittee is to continue the review of aviation noise issues, with a view to next year, in this subcommittee, writing and passing a national noise policy, one that we expect to do in cooperation with the Department of Transportation and the Federal Aviation Administration.

Our purpose here now is to begin the national dialog to get people's ideas on the record and try to understand what should be the elements or the building blocks of a national noise policy.

To that end, I have urged and encouraged witnesses to be open, candid, thorough and thoughtful in their presentations today, and I am very pleased with the testimony we have received on both technology issues, as well as on the land use issues, and those of air traffic control as it impacts populations on the ground.

Our first witness this morning is our colleague from the State of Washington——

Mr. PACKARD. Mr. Chairman, with your permission, could I make just a brief statement?

Mr. OBERSTAR. Certainly. Let me call the gentleman from Washington, Mr. Dicks, to the table and recognize our colleague from the State of California.

Mr. PACKARD. Excuse me. Perhaps maybe we ought to have the first witness, and then I will make my statement before the next panel, if I may.

Thank you.

Mr. OBERSTAR. Certainly.

Congressman Dicks represents a sector of the United States that is one of the most heavily impacted by aviation, the home of the world's premiere manufacturer of aircraft, and the home of aviation in so many other respects.

We appreciate your testimony this morning.

TESTIMONY OF HON. NORMAN D. DICKS, A REPRESENTATIVE IN CONGRESS FROM WASHINGTON

Mr. DICKS. Mr. Chairman, first of all, I just want to say generally that I think the initiative of this subcommittee certainly is appropriate. I think the country desperately needs to address this issue, and I want to applaud you and all the Members of your committee for the steps you have taken and the hearings that you are holding today.

I appreciate the opportunity to testify this morning as the subcommittee considers the issue of managing aviation noise around the nation. Clearly this is an issue for which there is no constituency of "supporters."

There are certainly no witnesses appearing before this committee, Mr. Chairman, who enjoy the noise of airplanes landing or taking off, nor have any asked for air routes to be redirected so that they pass over their homes and communities.

In every metropolitan area in this Nation, we are hearing the shrieks and howls of citizens who are noticing—and whose lives are affected by—the growing din of aircraft engine noise as airports expand to meet the ever-growing passenger demands.

We all know that technology is moving ahead and airplanes are becoming quieter, and that is something we all appreciate. So for me to come before this subcommittee today and say that I am opposed to aircraft noise is therefore obvious and redundant. What I am here to call for today is a more rational Federal policy toward airport noise in the United States.

Let me take this opportunity to give you, Mr. Chairman and the Members of this subcommittee, my perspective from Washington State, and in particular from the airport serving one of the Nation's fastest growing metropolitan areas: Seattle-Tacoma International Airport.

At SEA–TAC, as with most airports around the Nation, the need to accommodate increased air traffic has collided with increasing demands for growth management and the preservation of our unique quality of life.

This particular aircraft collision has made clear to me the inadequacy of the current FAA decisionmaking process as it relates to flight tracks and expansion plans.

As you know from earlier testimony from my colleague John Miller and representatives from Seattle, Washington, the FAA has this year imposed what is now known as the "four post" plan to accommodate increased air traffic at SEA–TAC airport. The implementation of this plan has proven enormously unpopular. It is, perhaps, most damaging to the airport's newly negotiated noise mediation agreement because it made clear that agency input and noise abatement concerns are subordinate to the FAA's quest for technical efficiency.

The FAA did complete an environmental assessment examining options for the new SEA–TAC route. And during that process, the agency report indicates that the FAA did contact a number of people. What is not clear is whether that input had any effect at all on the decisions the FAA ultimately made in designing the new flight tracks.

Furthermore, this was hardly a comprehensive process. My constituents, who live south of the airport in Tacoma and Pierce County, are experiencing the noise impact from a dramatic increase in air traffic. The traffic over the northern sector of Tacoma has increased from 50 flights per day to the current level of 300 flights a day due to the new flight plan.

Despite this impact, the only Pierce County input came from the manager of a small general aviation airport east of most of Tacoma's population.

This new SEA–TAC traffic plan is currently being challenged in court, Mr. Chairman, but I am appealing to this committee today to anticipate the coming avalanche of complaints and litigation, and to provide the leadership that the FAA clearly cannot offer at this time.

The patchwork handling of noise issues at airports around the Nation creates a leadership vacuum which Congress must fill and must do so expeditiously.

The Seattle-Tacoma episode has demonstrated to me that the current process for selection and implementing new flight tracks is inadequate. Citizen input and noise impacts must be given greater weight in the decisionmaking process. I believe that this can only happen if the FAA is required to go through the same process as other land use decision, filing an environmental impact statement and seeking input from citizens who are legitimately affected.

This is a simple concept, Mr. Chairman, telling people how they will be affected by major Federal actions and asking what they think about it. But I guess it's not so simple to the Federal Aviation Administration.

Therefore, I believe this committee should pass legislation requiring that flight track decisions and consideration of aircraft noise should fall under the requirements of the National Environmental Policy Act.

An environmental impact statement should be required for changes in flight tracks, as it is for airport expansions. Locating a flight path directly over a neighborhood is as great an intrusion as locating a highway in someone's front yard. Those impacts should be fully evaluated, and alternatives which both maximize safety and efficiency and consider noise impacts should be pursued.

Mr. Chairman, my purpose in testifying today is not to rail against increasing air traffic. Like most of us here, I fly more than I would prefer to, and am anxious to make air travel as safe and efficient as possible.

I also understand, however, the tremendous disruption that accompanies airplane takeoffs and landings. The decisions guiding airplane movements should not be made in a vacuum or insulated from the people that are most severely affected.

I believe that this committee's leadership in evaluating community sensitivity to aircraft noise, combined with the need to accelerate the transition to quieter Stage 3 aircraft, will help ease much of today's noise problem and help to prepare for the future growth of the airline industry in the United States.

I appreciate this opportunity to appear before you this morning and look forward to working with you in developing a national aviation noise policy.

Mr. OBERSTAR. Thank you very much for those thoughtful observations. You are quite right, you were preceded by other testimony from the Seattle area about the FAA plan, which has caused a great deal of concern among those who are newly impacted by noise and those who continue to receive what they consider to be unacceptable levels of noise.

You raise in your testimony the prospect of including FAA routing decisions under the NEPA policy, National Environmental Policy Act. Do you see any areas where there may be irreconcilable conflicts between safety in flight patterns and noise impact on citizens and some thoughts about how those two might be reconciled?

Mr. DICKS. Well, obviously safety has to be our first priority. But it seems to me that at this point, the FAA, as it develops its plan, obviously takes safety and airport efficiency, landings and takeoffs, into very high consideration.

What I don't think is being adequately considered are the alternatives that might lessen the environmental impact and the noise impact. And that is where I think this process has fallen down.

Obviously, safety has to be the first consideration. But I think what we need to do is elevate the concern for noise and the environmental concerns so that they get significant attention as well. I dont think it is going to be satisfactory to merely do an environmental assessment, which is almost a cursory review from an environmental perspective, done by agencies when they really don't want to get in and look at alternatives.

I think you are going to have to show people that you really did weigh all the various possibilities prior to developing a plan. It must be very, very safe, but also it must minimize the noise problem to the greatest extent possible.

So what I am saying is let's raise the noise issue up to a little higher consideration by the FAA.

Mr. OBERSTAR. What has emerged from the hearings is that from the East Coast Plan to the plan in Seattle, the community populations are saying the same thing. We have been subjected to unacceptable levels of noise, of which we were unaware in some cases. And third, that we were not consulted in the process. We had no input. We had no say. The FAA, fourth, wouldn't even listen to us, and we want the process changed.

What has also emerged is that the planning process for changing departure and arrival plans and routes for aircraft are many, many months in the making. They do not happen overnight.

There are some emergency situations when routings have to be changed and must be done very rapidly. But for a long-term plan, the FAA is obviously involved over many, many months doing their internal deliberations.

There is no reason, therefore, that the process cannot be subject to another level of review by the public, public input, that in trying to sort out the safety considerations, which you rightly access, must be first in the FAA's mind.

There may be more than one route and more than one plan that provides for safe routing of aircraft; and in the consideration of more than one plan, we may find some that also inflict less noise upon the populations who must live under those flight paths.

The gentlewoman from New York?

Ms. MOLINARI. No questions, Mr. Chairman. I will wait until after this witness to make an opening statement.

Mr. OBERSTAR. Mr. McEwen.

Mr. MCEWEN. No questions.

Mr. PACKARD. No questions.

Mr. OBERSTAR. Norm, thank you very, very much.

Now the Chair recognizes the gentleman from California.

Mr. PACKARD. Thank you very much, Mr. Chairman.

The issue of aviation noise is a difficult one, and we are all aware that there is a major problem. But no one is quite sure how to remedy it.

These four days of hearings receiving testimony from experts in the field, as well as those affected by aviation noise, have shed some light on just how difficult finding a good solution will be.

I want to welcome all of the witnesses that will be and have testified today, and look forward to hearing their testimony. I wish to give special welcome to Jan Mittemeier, who just recently was named the new airport manager of John Wayne Airport, which is in Orange County, part of my district.

I have read through her testimony, and am sure that my colleagues will find her comments very helpful as we explore this important issue. As we examine the noise issue, Mr. Chairman, several questions quickly come to mind. What is the appropriate role for the Federal Government? How do we achieve an effective Federal noise policy without severe preemptions of local jurisdictions? I hope we can address these and other pertinent questions in this forum.

I wish to commend you, Mr. Chairman, for scheduling the in-depth look into the noise question in this Congress. I am certain that under your leadership we will fully explore the issue in the next Congress as the committee works to put together a solid, fair noise legislation.

I also want to thank the ranking minority Member of this subcommittee, Mr. Clinger, for his leadership in this area as well and wish to certainly encourage the committee to listen carefully to the testimony of Ms. Mittemeier.

Mr. OBERSTAR. Thank you very much for those thoughtful observations, for your kind remarks.

I would like to return the compliment, though, and state that the gentleman from California has been most helpful in working toward a national airports policy.

And the concept that we are working on, of a national noise policy, together with the gentleman's ideas on a national integrated policy for airport capacity expansion, will work hand in glove with this effort that we have launched with these hearings.

The Chair will at this time recognize the gentlewoman from New York.

Ms. MOLINARI. Thank you very much, Mr. Chairman. I appreciate your indulgence, and I will be brief.

Mr. Chairman, as a Member of this subcommittee, I have had the opportunity in the last few weeks to listen to many different community groups, corporations and the FAA, on the problems of noise. Later today, residents from my district in Staten Island, New

York will testify on the devastating effect of aircraft noise—that has had on their lives.

They will also speak, as you correctly stated, as all our testifiers have, on the unresponsive nature of our regional office at FAA to their concerns and their problems.

This hearing has been extremely helpful for me. We have heard many different suggestions for dealing with aircraft noise problems, including using the Department of Defense air space, requiring the Environmental Protection Agency to review FAA's environmental impact statements before enactment, directing the FAA administrator to transmit to Congress a copy of a plan of reducing noise resulting from airports, all of which I know will be seriously considered when we craft what I hope will be a successful noise abatement policy.

As we unfortunately know, however, the problem becomes deeper because it's exacerbated by the way the FAA has handled these situations.

As we have all learned and I have heard discussed time and time again, the FAA did not do an environmental impact statement for the implementation of the East Coast plan. Tuesday, according to Dan McDaniels of the FAA, they didn't even do an environmental assessment when they rerouted planes this January over Staten Island. He claimed that the decibel change was such that it wasn't necessary.

When I went back and checked our records, in fact sometimes the decibel levels, according to New York City Department of Environmental Protection records, goes as high as 102 decibel levels over what is maximally allowed.

These people are suffering every day and every night, and FAA has not even had the courtesy to provide them with answers that could come in an environmental assessment.

And I will hopefully, with your cooperation, pursue, enforce at least, that minimal overview of what is going on here in Staten Island and any ways that we can mitigate it, short term and long term, for our Nation.

In conclusion, Mr. Chairman, I want to say I look forward to working with this subcommittee. Representatives from Staten Island who have come here today and have taken their time and gotten on a bus first thing this morning to be here to express their concerns.

I want the residents to know that this is the fourth day that the Subcommittee on Aviation has held hearings, starting sometimes at 9:30 in the morning and going until 7:00 o'clock at night.

It's something that Chairman Oberstar has taken very seriously, and I feel very comfortable and confident that under your leadership, we are going to come to some answers for these people who have come before us today.

Mr. OBERSTAR. Thank you very much. I appreciate those good words.

I might also say that the gentlewoman from New York has been here during those 10, 11 and 12 hour days taking in the witness statements and testimony, and making very thoughtful considerations and observations. Together, we will come to a resolution of this issue.

Now let us invite our first panel. Mr. Turner, City Council Member for the City of Newport Beach; Ms. Mittermeier, Airport Manager for Orange County, California; and Mr. Thomas Greer, Director of the Burbank-Glendale-Pasadena Airport.

I want to remind witnesses that your complete prepared statements will appear in full in the record, and that we would appreciate your summary of the highlights, the key points you want to get across to the committee, so that we can have an interchange and then move on to other witnesses.

Mr. Turner.

TESTIMONY OF CLARENCE TURNER, CITY COUNCIL MEMBER, CITY OF NEWPORT BEACH, CA; JAN MITTERMEIER, AIRPORT MANAGER, ORANGE COUNTY, CA; AND THOMAS E. GREER, DIRECTOR, BURBANK-GLENDALE-PASADENA AIRPORT

Mr. TURNER. Mr. Chairman, thank you very much. My name is Clarence Turner, and it's my pleasure to appear here today on behalf of the City of Newport Beach.

I want to focus my testimony on two issues of greatest concern to the City of Newport Beach, the air carriers proposal to eliminate the right of an airport operator to regulate Stage 3 operations and the effect of that proposal on the John Wayne Airport Settlement Agreement.

In our opinion, the right of the airport proprietors to impose reasonable, nondiscriminatory noise control measures must remain intact. We also believe that any national airport noise policy should have no effect on existing noise control programs implemented pursuant to negotiated settlements between airport proprietors and impacted residents.

These agreements are based on the legitimate expectation that the airport owner would continue to have authority to implement court-approved noise control measures, and any restrictions on proprietors' rights should not be applied retroactively to affect contractual rights.

Newport Beach was almost fully developed when, in 1967, commercial jet aircraft were introduced to JWA. Ten years later, the county initiated a master plan to expand John Wayne Airport. The master plan contemplated a ten-fold increase in the size of the terminal, a three-fold increase in the number of passengers served, and more than 30 additional commercial jet aircraft departures.

The City of Newport Beach and two citizens' groups filed a successful legal challenge to the proposed expansion but dismissed the lawsuit in consideration of county modifications to the expansion plan.

The modified plan still called for the construction of a terminal seven times larger than the old facility, a 150 percent increase in passengers served, and more than 30 additional daily commercial aircraft departures.

The JWA settlement agreement was embodied in a Federal court approved stipulated judgment and an environmental impact statement approved by the FAA.

The right of an airport operator to impose reasonable noise mitigation measures was an essential component of the JWA Settle-

ment Agreement. Newport Beach could safely withdraw its opposition to the new terminal and increased operations because the county had the legal right to impose reasonable limits on the number of noisy flights.

In the absence of such authority, Newport Beach would have continued to litigate and the challenge could have substantially delayed the construction of the new terminal and significantly increased its cost.

Any increase in capacity at an airport requires the funding and construction of new facilities and those facilities are likely to be the target of residents and property owners impacted by the noise, traffic, and air pollution generated by new operations.

The proprietor should have the ability to solve the local environmental and political problems associated with airport expansions to avoid or resolve legal challenges and political opposition. A proprietor's ability to mitigate airport impacts will facilitate expansion projects that add needed capacity to the air transportation system.

Airport proprietors should continue to have the right to adopt, or not adopt, reasonable noise mitigation measures. Restrictions appropriate to JWA may well be inappropriate or unnecessary for a proprietor operating a major hub airport impacting relatively few residents.

The airport operator is in the best position to evaluate the type and nature of restrictions necessary to best solve local airport noise problems. The airport operator may have a better solution to those problems than a blanket Stage 3 restriction, but will have greater difficulty implementing those solutions in the face of political pressure demanding the maximum protection provided by the national noise policy.

Airport owners should continue to have the right to use their good judgment to adopt noise mitigation measures appropriate to the specific facility—not the arbitrary Stage 3 limitation proposed.

The right of a proprietor to adopt noise mitigation measures is predicated on the potential for liability resulting from aircraft operations. In Newport Beach alone, a substantial increase in airport noise could easily reduce property values by $100 million or more. Any attempt to eliminate this liability would run afoul of the Fifth Amendment's prohibition against the taking of property without compensation.

The liability could be transferred to the airlines or the Federal Government and, understandably, the air carrier sponsored noise policy shifts the responsibility to the Federal Government. Federal Government acceptance of this liability, which could amount to billions of dollars nationwide, seems unwise and inappropriate.

We recognize that Congress will be under increasing pressure to solve a perceived shortage in the capacity of the air transportation system. However, the noise policy sponsored by air carriers seems to target only those few airports like JWA that have imposed relatively stringent noise mitigation measures because aircraft operate extremely close to, and severely impact, thousands of homeowners.

No one has presented any evidence, to our knowledge, that adoption of such a noise policy will have the desired effect of facilitating an increase in capacity. We encourage Congress to consider other

solutions such as incentives to the construction of new airports and the conversion of abandoned military facilities to civilian airfields.

In the event Congress wishes to depart from the current law granting proprietors the authority to impose reasonable noise control measures, the new policy must grandfather settlement agreements or stipulated judgments which were based upon the waiver of rights by municipalities or their residents.

Fairness dictates that a new national noise policy must be applied prospectively rather than operate retroactively to invalidate the reasonable expectations of the parties to negotiated settlements.

Mr. OBERSTAR. Thank you. We appreciate your testimony and your thoughts on this issue.

Ms. Mittermeier.

Ms. MITTERMEIER. Good morning, Mr. Chairman. My name is Jan Mittermeier. I am the manager of John Wayne Airport in Orange County, California.

We have submitted written testimony to the subcommittee which summarize our views regarding the importance of maintaining a viable role for airport proprietors and addressing at the local level incompatibilities between airport development and local environmental impacts.

While I don't intend to repeat what we have said in our written testimony, I do want to emphasize again our belief that continued proprietor authority to regulate airport operations for noise control purposes is essential to the processes inherent in developing new airport infrastructure.

If airport proprietors are deprived of that traditional authority by preemptive Federal legislation or policy, then we are concerned that the difficult job of providing enhanced airport capacity and new airport infrastructure will be almost even more difficult, perhaps impossible.

Certainly based upon our experience, it seems clear that our ability to give assurances to the local communities affected by airport noise regarding the precise nature of the environmental impacts they could expect during the 20-year period of our master plan, which runs from 1985 to 2005, was the key element in our ability to gain their consent and cooperation in significant capacity increases we have been able to implement at John Wayne Airport since 1985.

Aside from the $310 million in airport improvements which we have implemented since reaching this agreement in 1985, we have been able to increase the number of air carrier flights at Orange County from 41 average daily departures to over 103 average daily departures. And we have the legal capacity to proceed to a service level of approximately 160 departures, when demand will support the service.

In 1985, we increased our passenger service levels from an historical level of approximately two-and-a-half million annual passengers to a level of approximately 4.7 million annual passengers.

On October 1, 1990, three days ago, we began Phase Two of our master plan program, during which service levels will increase to 8.4 million annual passengers. We had two scheduled air carriers

in 1978, and we have 10 air carriers serving John Wayne Airport now.

There has been a significant growth in the number of commuter or regional airlines and in the amount of service they are providing to our community, a trend which we expect to continue.

This is, we believe, a capacity enhancement record which few, if any, airports could match during the 1985 to 1990 period. And it could not have been achieved if provisions similar to those contained in Senator Ford's proposed legislation had been the prevailing law in 1985.

There are, however, a few points which have come up during the hearing which I would like to briefly address this morning. Senator Ford's proposed legislative noise policy would mandate a Federal review and disapproval of virtually all existing restrictions adopted at John Wayne Airport. Some of these date back over 20 years. These restrictions are the underpinnings of our agreement with local communities by which they consented to our expansion program in 1985.

They were also mitigation measures identified in a joint EIR, EIS for our master plan project. That documentation was reviewed and approved by FAA under the National Environmental Policy Act.

The program, as a whole, provides certainty and predictability, both to the local noise affected community and to the commercial and general aviation operators. Using JWA as pointed out in our written testimony, we have consistently undertaken to communicate and coordinate with FAA officials on all issues relevant to the regulation and development of our airport. It would be inconsistent with all traditional concepts of fair play that this heavily negotiated agreement in which all relevant parties had a complete and equal chance to participate should be now overturned by Federal legislation.

We think it would be a serious mistake for the Federal Government to replace local airport proprietors as the negotiators between the many competing concerns regarding airport growth. But if the Congress disagrees with those views, then at a minimum, a grandfathering provisions should be included in any such bill to protect and recognize the legitimacy of regulatory and development programs undertaken and agreed to long before this recent Federal initiative.

The GAO has already testified to this committee that in its view, the existing airport restrictions do not cumulatively impose a significant burden on the system, and in the view of the GAO would not be expected to do so until 1995, even if present Federal policy remains unchanged. Frankly, we don't believe that it would happen then.

One element of Senator Ford's bill of particular concern to us is the provision which would afford a private right to action to commercial airport users to seek to litigate, to enforce grant assurances given by airport proprietors to the United States under the AIP program.

Aside from our obvious distaste toward legislation which encourages civil litigation, we think this provision would be a major step backwards and an impediment to the future development of airport infrastructure and capacity.

AIP grants are contracts between the United States and the individual airport proprietor. If there are differences in interpretation of the obligations under those contracts between the parties to the contracts, then they are the parties to resolve those differences, not third parties who accepted the obligations under the agreement—who accepted no obligations under the agreement.

More importantly, the private right-of-action provisions is really nothing more than a delegation from the Congress to the courts of the job of making aviation policy. We also would prefer to see legislative, rather than judicial bodies, making these critical decisions in the coming years.

The judicial process is not well suited to dealing with the wide ranking and convoluted issues and relationships inherent in any airport controversy.

The focus of the judicial process if often too narrow to allow formulation of good policy. Equally important is the fact that the private right-of-action is just not necessary. FAA has administrative and judicial review procedures, and opportunities and constitutional parameters still exist and may be used to define the limits of local discretion where real and demonstrable impacts on the national interests can be shown.

The judicial process is also slow. If policy in this area is to be made by the courts, many airport proprietors may sit it out for a few years to see how judicial doctrine develops before making commitments to increased liability risks which are inherent in airport capacity expansion issues and controversies.

Frankly, in many areas of the country we just don't have the time for that type of diversion from the task of addressing the critical capacity issues that we do face in the 1990s.

We do believe there are viable alternatives to the proposal such as Senator Ford's bill which would involve a more active role by FAA in representing the Federal interests as local restrictions and capacity enhancement projects are developed.

In fact, we would strongly support such a role. However, because this is a difficult and complex issue, rather than present a haphazard proposal to you today, we would like to submit some supplemental written testimony for the record, in which we can present a detailed proposal which has been developed with the appropriate amount of thought.

We understand that the record of these hearings will remain open for some time; and with your permission, Mr. Chairman, we would like to submit a proposal during that time period for consideration by you and the subcommittee.

Thank you very much.

[The prepared statement of Jan Mittermeier appears on p. 852.]

Mr. OBERSTAR. Our next testimony will be from Mr. Greer from the Burbank-Glendale-Pasadena Airport.

Mr. GREER. Mr. Chairman, my name is Tom Greer, and I am the Director of Airport Services for the Burbank-Glendale-Pasadena Airport Authority.

I want to thank you for allowing me this opportunity to offer this testimony. In the interest of time, I will summarize this morning the testimony which I have previously submitted.

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I am pleased to offer the following remarks regarding the passenger facility charge and the national noise policy. First of all, Mr. Chairman, I would like to commend you and this committee for your willingness to address such challenging issues. We recognize that they are politically delicate, yet addressing them is essential to the survival of the National Air Transportation System.

The Burbank Airport is firmly convinced that a passenger facility charge and a national noise policy are both essential to enable much needed investment in our country's aviation infrastructure.

The exact form is yet to be decided, but Burbank Airport wishes to commend your leadership and that this committee has shown in the considerable movement that has taken place in Congress toward these goals.

At Burbank, the Airport Authority has long struggled to replace the current terminal building built over 60 years ago. The primary impediment of this project thus far has been the unavailability of an appropriate site.

Now an appropriate site has become available, but financing is a huge obstacle. It's clear that some form of Federal assistance must be considered in order to enable the purchase of this land.

It's a one-time opportunity that we dare not miss, much like the opportunity to acquire the airport from Lockheed in 1978.

The safety and capacity enhancements of a new terminal development will be more than worth the effort. And as for capacity in Southern California, it's hard to imagine that a better return on your investment, investing in airport adjacent land at Burbank.

Now, assuming that we buy the land, however, the Airport Authority will still be hard pressed to build a new passenger terminal facility without the availability of the PFC. I am sure variations of this story can and are told by the Army or the Nation's Air Force.

Turning to the national noise policy, Burbank Airport is well aware of the conflicts brought about by local interests which tend to place their concerns about aircraft noise ahead of the benefits that they and the Nation as a whole receive in the smooth flow of air commerce.

I am happy to say that at Burbank Airport, we are living proof that something can be done to address the noise problems without placing an undue burden on interstate commerce.

A noise policy based on the complete phase-in of Stage 3 aircraft offers a promising approach. That is exactly the program undertaken by Burbank Airport during the past decade, and the results are there for all to see.

That chart is attached to my testimony, showing the reduction in incompatible acreage. Since 1978, we have reduced incompatible land by over 95 percent, even though more airplanes and more passengers are flying today.

We owe this noteworthy progress to the airline's cooperation whereby they were able to phase into the airport a 100 percent Stage 3 operation by April of 1987.

The value of this program to the surrounding community is substantial. Not only have the cumulative noise levels dropped dramatically, but the single event interruptions of each flight are significantly less intrusive. And based on feedback through the air-

port's noise complaint phone lines and professional scientific surveys, these improvements are making a difference to the public.

An important point in the Burbank Stage 3 program is that we have achieved good results by restricting the number of aircraft operations. The only thing needed now is for the Burbank experience to be folded into a national policy so that local officials can be assured they can pursue the goal of meeting the travel needs of their community.

However, Mr. Chairman, we must be very clear and emphatic that Stage 3 airplanes can still be heard. We cannot convey the impression to the public that Stage 3 airplanes are silent. This only leads to an expectation that once Stage 3 comes about, that people will no longer hear airplane noise.

This false expectation continues to surface, and the major complaint from many residents saying the airport lied to them about the benefits of Stage 3 aircraft.

Perhaps the most delicate issue in establishing a national noise policy is deciding what to do about existing noise rules. There is no easy answer, as I am sure you are aware. However, I would caution against wholesale aggregation of efforts made thus far.

Years of work across the country could quickly be undone if the national policy is not carefully crafted. For example, Burbank Airport has an approved FAR Part 150 Study, three years in the making. The noise maps accepted by the Federal Aviation Administration as part of that study are based on the continued use of 100 percent Stage 3 aircraft. Any attempt to change that fundamental assumption would vastly diminish the benefits the airport and the public received upon completing that study.

In summary, Mr. Chairman, the Burbank-Glendale-Pasadena Airport Authority supports the concept of a national noise policy, keeping in mind the impact on local communities and the progress that has already been made. It also sees the passenger facility charge along with conventional funding sources as an essential ingredient in providing the facilities needed to meet the capacity demands of today and tomorrow. And we commend you, sir, and your committee for addressing these very sensitive issues.

I thank you very much for this opportunity, and I will answer any questions you may have.

[The prepared statement of Thomas E. Greer appears on p. 839.]

Mr. OBERSTAR. Well, Mr. Greer, I think you said one of the central truths of the technology aspect of this issue, and that is, don't expect Stage 3 to be silent aircraft. There is no such thing. There are no Stealth noise aircraft. They are going to make some noise, and people have to realize that, although they are less noisy than stage 2 aircraft.

The question for aviation is what is that level that is acceptable? And how can it be mitigated? And how large a population must accept some or what degree of noise?

And my concern is that when people get accustomed to Stage 3, the quietest aircraft that are now in the fleet it won't be long before they say, "Gee, these aircraft are too noisy. We have to do something about it."

And we may be then at the limits of technology, and there may not be any other traffic patterns to move around. So a noise policy

has to take into consideration the technology available to us to quite aircraft and land use zoning policies to keep people as much as possible out of the noise footprint of the aircraft.

And in some circumstances, that may be easier than others. When you are building an airport in a green field, you certainly can put all the buffer zones in to keep people out. But when you have an airport in an already heavily settled population area, you may not have much flexibility.

So then you have to return to technology or think about buying everybody out, moving them out of the area. I don't know how acceptable that is. People don't like to have their neighborhoods torn up. They want to stay in their church groups and their schools and where they have settled in and raised families. These are not easy situations.

There is no noiseless aircraft. Even a glider makes a whoosh of air. If you shut off the engines, if you somehow could, on the quietest aircraft, the Stage 3 aircraft coming in, there would still be a high, maybe an even unacceptably high level of noise, just from the air frame as it comes in for a landing, a certain amount of scream that people would detect and would be troublesome.

Most of the noise, though, does come from engines. And you know, you are raising some real concerns about relocation of airports. And in that connection, let me pursue a matter that I have raised with other panels. Who has the zoning authority in your airport area? Does the airport have zoning authority? Does the county or the city hold that authority?

Mr. GREER. Mr. Chairman, the Airport Authority is a creation of three cities, Burbank, Glendale and Pasadena. It came about a little over ten years ago when the airport was purchased from Lockheed. It was a privately owned airport up until that time.

The Authority is an entity onto itself, so it does nothing except own and operate the airport. The land use around the airport is determined by primarily the City of Burbank, but in another very real sense, the City of Los Angeles; and so the Airport Authority does not have the control of the land use around it.

Mr. OBERSTAR. If you were to relocate the airport, how would you protect it against encroachment of first, as we have seen the pattern, light industry. Noise doesn't bother them. Then comes commercial development and then residential follows it, shopping centers and so forth. And then you have a big noise problem. How are you going to protect that if you relocate it?

Mr. GREER. Well, Burbank Airport, there really is nowhere to relocate. There is no empty land in the Southern San Bernardino Valley, with the ability to put an airport.

The relocation option would be an airport out in the desert. But the airport itself is a very vital part of the capacity issues serving Southern California, as is John Wayne, Ontario and Long Beach, along with LAX.

And I think it's important to recognize that the airports are already impacted. They are the airports that are surrounded by land use that is not compatible with an airport for the most part.

So we have, in recognizing this, we have addressed the problem with the introduction of Stage 3. And we have shown where Stage 3 airplanes have reduced the incompatible acreage contained in the

70 CNEL contour from other 410 acres in 1978 to less than 25 acres. And that is a measurable, demonstrable measurement of reducing the impact by the introduction of Stage 3 airplanes.

Mr. OBERSTAR. Thank you. I will have some other questions later.

Ms. Molinari?

Ms. MOLINARI. No questions.

Mr. OBERSTAR. Mr. Packard?

Mr. PACKARD. I will try to be brief, Mr. Chairman, because I know that we would like to release this panel before we go for vote.

Ms. Mittermeier, there has been lawsuits against the John Wayne Airport over the past. What have you done to mitigate the, or to meet the requirements of those lawsuits?

Ms. MITTERMEIER. Well, that, I think, is key to what has allowed John Wayne to expand. We had, over the past 20 years, we have had continuous discussions, meetings, and litigation and threatened litigation with the surrounding communities, particularly with Newport Beach.

Our final settlement agreement was reached with the City of Newport Beach in February of 1985. That settlement agreement was between the community and the County of Orange, and it was a result of an EIR/EIS that, in fact, resulted in the mitigation measures that we now have in place.

The mitigation measures that are related to the decibels of noise that an aircraft may create is the number of flights, and the cap as far as the number of annual passengers.

Our ability to work with the surrounding communities and to reach a settlement agreement that gave those communities an indication of what the future would hold for them if we expand was what permitted this airport to double its capacity.

Mr. PACKARD. If the Federal legislation as currently proposed went into law, how would that affect your agreements with your surrounding cities, as a result of the court action?

Ms. MITTERMEIER. An effect of those agreements are like a contract, and it would be a violation of those contracts. We would no longer be able to honor any of the mitigation measures currently in effect because all of the aircraft currently flying out of John Wayne Airport are Stage 3, and that legislation would preempt us from putting any kinds of restrictions on those aircraft.

Mr. PACKARD. Mr. Chairman, I have maybe another question or two, but I would defer the time and will perhaps submit them and ask them to respond in writing.

Mr. OBERSTAR. We do have seven minutes remaining on a vote, a recorded vote on the House Floor.

I have just a couple of questions I would like to ask of this panel. We will take a recess for this vote and return in roughly 10, 12 minutes and resume.

[Recess]

Mr. OBERSTAR. The subcommittee will resume its sitting.

Ms. Mittermeier, I commend the John Wayne Airport on achieving harmony, or at least working toward and establishing a degree of harmony within the community and still being able to expand capacity.

Few other airports have been able to have such good results. Capacity there is limited. Airports are experiencing congestion-related

delays. And GAO, in testimony before the committee, predicted that if only a few more airports, it wouldn't take very many of them, limit or exclude Stage 2 aircraft, there could be far-reaching effects on the national system.

And recognizing that while, say, the Burbank-Glendale-Pasadena Airport is Stage 3, all Stage 3, as I recall your testimony, Mr. Greer, what that means is that other airports are getting Stage 2 aircraft because not all of the aircraft in every airline's fleet have been converted to Stage 3. They are simply incapable of doing that in so short a time frame.

So while one airport is able to reduce noise for its constituents, the result is that noise goes up for somebody else. In that context, my question is, what role is there, or is there a role for a Federal noise policy?

Ms. MITTERMEIER. Thank you, Mr. Chairman. I appreciate the opportunity to answer that question.

One of the things I think we should note about the John Wayne story, as it were, is we have emphasized here the protection and the benefit of the community. But actually, our process was arrived at through the cooperation of the air carriers, and the Federal Government, and the community.

So while the community has some benefits associated with it, so do the air carriers, in being able to expand their service.

Any additional noise policy, I believe, should make sure that those same participants, that is, the air carriers and the Federal Government representing the system as a whole, and the airports representing their communities, perhaps, have an input to make sure that everyone is satisfied with that policy.

I understand your concern about if everyone went to a John Wayne Airport type facility, perhaps we would have a problem, and that would definitely be the role of the Federal Government. And I would see a national noise policy as perhaps implementing a graduated stage out of Phase 2, which I believe that the air carriers will go to at any rate, because Stage 3 is a more efficient aircraft to fly for fuel; perhaps a nonaddition rule, or something like that, that would also help protect against the addition of Stage 2.

But I think there should be also greater—a provision for greater FAA involvement as a participant, not just as the final arbitrator of what happens because of their vast information processes and what they have at their fingertips as far as what is happening to the system that the local proprietor does not have.

Mr. OBERSTAR. Those are very useful thoughts.

One final question for all three members of the panel, and I would like a brief response, and that is, if a national noise policy enacted by Congress, adopted into law, signed by the President, were to include a goal within a definitive number of years, Stage 3 for all airports in the United States, would your airports agree to stick with that and not insist on local authority to go above that limitation to 3.5 or 4, or whatever the next phase would be?

Ms. MITTERMEIER. I will respond first, Mr. Chairman. We have in effect what is now a contract, a 20-year contract; and I believe that was a beneficial result.

That contract obligates the airport and the air carriers using that airport to meet certain requirements on, that the community is subjected to only certain amounts of noise.

Any additional noise policy, I believe, should grandfather in those types of existing contracts. But the benefit of involving a community in any type of agreement is that you do end up with, in effect, a contract; and that contract, if you agree—if it happened to be an airport that agreed to all Stage 3, and the community was satisfied that they were being protected, that again would be a contract.

You cannot absolutely look into the future and say what your community will do, but certainly that is a very good indicator that you have protection against more and more and more stringent requirements at individual airports.

Mr. OBERSTAR. Thank you.

Mr. Turner.

Mr. TURNER. Mr. Oberstar, I would add to what Ms. Mittermeier just said by pointing out that John Wayne is a little bit of a different kettle of fish. This process has been going on almost nearly 20 years. We have had a lot of political blood letting, a lot of lawsuits and so forth, and I guess I could say that I have been in the leadership of the adversarial group opposing expansion of John Wayne Airport. So I have been there.

But I think it's important to realize that we have had Stage 3 since really the beginning of the decade. It's also important to realize that as a part of a compromising process that we have gone from roughly two-and-a-half million passengers per year going out of John Wayne Airport to a situation today which allows for 8.4 million passengers per year going out of there.

So we feel from our perspective that we have done our share to help meet that demand out of Orange County. We still have a tremendous demand out there that is going to be unmet. But nonetheless, we have gone a long ways toward helping to resolve that issue. So to say we will go beyond that is a little bit difficult, and as Jan points out, we now have a contract. It's backed up by a Federal court order which we hope will protect us through the year 2005.

Mr. OBERSTAR. Thank you.

Mr. GREER. Mr. Chairman, briefly in response, I think that the Burbank Airport, given that the noise policy withstood the test of passage through houses of Congress signed by the President, we would indeed abide by the orders of the President.

But I need to make the point that Burbank, much like Orange County, you have a unique set of circumstances in the nature of the airlines, the nature of the market that we have. And at Burbank we achieved a Stage 3, 100 percent Stage 3 fleet with the cooperation of the airlines without litigation by the homeowners or the airlines.

It's an achievement that was brought about without an adversarial relationship. I think that if any policy is established by the Federal Government, airports are longing for a policy that will give them a target, or a parameter, in which they can operate.

And if the parameter can be established in one of the ways that we looked at several years ago, was the Part 150 Study, it pretty much gives a circle around an airport and says if you operate

within that circle, then you will be held harmless or you will be exempt from liability. Exceed that, and then you are subject to some—to litigation.

I think that airports are looking for some kind of goal or some kind of parameter in which they can operate without fear of the reprisal. Because I think the biggest obstacle has been this fear of costly, continuous litigation and the fear of the local officials to have to deal with that on a day-in, day-out basis.

But I think if we had a national policy and if it gave us that limit to which we could operate, and if we held—if we operated within that limit and the Federal Government would ensure that the airports would be held harmless as long as they operated within that parameter, I think that the Burbank Airport could support a national policy.

Mr. OBERSTAR. Thank you very much. I appreciate your responses and your suggestion that the contract with air carriers, in effect, be grandfathered; it makes some sense. If those airports would achieve a level of reduction of noise, we would not want to see a national noise policy lower that level for them. You would want to be protected.

As you said, Mr. Greer, just as the air carriers want some certainty when they make the investment, acquire the aircraft or reengine a hushkit, that that investment can be amortized over a period of time and that they won't be asked before that amortization expires to make additional investments in technology. They want to have some certainty. So do airports.

Those are very good suggestions as we proceed in this process of fashioning a national noise policy. Thank you very much for your contribution.

Mr. OBEPSTAR. The Honorable Beverly Byron, the 6th District of Maryland, the Honorable Constance A. Morella. Mr. Albert Brown, Executive Committee, Board of Directors, Citizens for the Abatement of Aircraft Noise. Please come forward to the table.

Congresswoman Byron, welcome. Thank you for joining us.

TESTIMONY OF HON. BEVERLY B. BYRON, A REPRESENTATIVE IN CONGRESS FROM MARYLAND

Mrs. BYRON. Let me say that I am pleased to be here for what we thought would be this morning, but it is getting on to this afternoon.

Mr. OBERSTAR. I made apologies to all witnesses for the uncertainties.

Mrs. BYRON. I am here to introduce to your committee Mr. Albert Brown, a member of the Executive Committee for the Citizens for the Abatement of Aircraft Noise. It may likely include many of your own neighbors. That is when you are living in Washington.

Our office was around before CAAN began. It was started with a phone call. All the single groups seemed to pull together. Now we have group membership, including 67 civic associations, representing over a half million residents in the metropolitan Washington area, just a little under a congresssional district.

I don't want to take a lot of time because Mr. Brown has a lot to tell you. I would urge that the committee seriously listen to what he has to report. National Airport was never intended for the heavy use that it has today. As a native Washingtonian, I can remember very vividly as a child, a fairly small child, the day that it was dedicated. And the noise and the activity that was generated there, I must say, has gotten worse with each year.

Since coming to Congress I have worked with my constituents who live under one of the two flight paths. With over 100 flights a day at National, we hear from them frequently. I have several constituents that have meters in their yards. They can tell me the decibels on a regular basis. They check them frequently. Mr. Adams is very familiar with the reports that come from his yard. Mr. Brown, representing CAAN, understands all of those issues very well.

I think that the issue you have before us is one that is very, very difficult to address. You have had probably more input in the last four days than anyone ever needs to have on this issue. I appreciate you giving one more panel your ear. It turns out to be a panel that represents your neighbors when you are here.

Some people feel that the airport transfer bill should have made things better by removing National from FAA's control, although I wasn't so confident of that. It hasn't eased the burden on my constituents. The community is still lacking in the major decisions affecting that airport, namely, the noise reduction. I think this issue is one of great importance to the communities.

I commend you once again for taking a serious look at this issue and would be happy to offer my assistance, the expertise of my constituents, your neighbors, and am pleased to, with my colleague from Montgomery County, Connie, introduce to you one of our constituents.

Mr. OBERSTAR. Thank you very, very much. I appreciate your thoughts. Certainly we will listen to these views with great attention and with the seriousness and purpose with which they are delivered. They are our neighbors when we are living here, and that is most of the year. Congress is a year-round institution.

Connie, welcome.

TESTIMONY OF HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM MARYLAND

Mrs. MORELLA. Thank you very much, Mr. Chairman. It is a great pleasure to be here representing the 8th District of Maryland. Thank you for letting me have the opportunity and for my colleague Congresswoman Byron for having the opportunity.

I want to commend you for having this hearing and for having a series of them through all of those days. Your expertise is really welcome and your sensitivity to the whole issue. As far as I am concerned, it is also a pleasure to appear here at a committee that you chair so ably, knowing that you represent the 8th District of Minnesota, but live in the 8th District of Maryland. I am honored to have you as a constituent.

The Washington Post calls airport noise an "evergreen" problem in the Greater Washington area. It is a problem that has been haunting local and Federal officials for too many years. The time is

ripe to effectively address the concerns of the communities surrounding National Airport, and at the same time, address the safety and economic concerns of the airport transportation system.

Airport noise is a growing problem in America. The Citizens for the Abatement of Aircraft Noise, CAAN, so ably represented by Mr. Brown who Mrs. Byron introduced, CAAN began in the Greater Washington Area just a few short years ago, now encompasses 67 citizen groups from around the country with more than 500,000 members.

Unlike oil spills or landfills, noise is an invisible pollutant. But the hazards are just as real. Noise causes stress, much the same as a traffic jam or the threat of a recession. According to experts, noise causes hearing loss, impaired health and antisocial behavior.

My constituents have asked the airport authority to ban nighttime flights in order to relieve the stress of sleeplessness. They have asked the airlines to phase in Stage 3, "quieter," aircraft to reduce the negative impact on the quality of their lives. Outdoor barbeques and dinners on the veranda are impossibilities in the communities surrounding National Airport. I have been told that noisy aircraft even interferes with normal conversations within well-insulated walls.

Millions of people all over the country are affected by aircraft noise. However, the problems and solutions vary from airport to airport. Consequently, we must be flexible in formulating a national noise policy that would include input from the local communities as well as the aviation industry. We must aim to achieve balance between the needs of the airports and the airlines and the concerns of the citizens in the local communities impacted by aircraft noise.

There is no doubt that elected officials in the Greater Washington Area are united in their efforts and determination to keep noise from National Airport at tolerable levels. The Washington regional government has made a good faith agreement to work with citizens of the affected communities to alleviate the problem of noisy aircraft. I remain committed to that agreement.

Again, thank you for affording me the opportunity to speak on behalf of my constituents who are impacted by aircraft noise.

Mr. OBERSTAR. Thank you. You describe very well the impact to people living in Montgomery County along that flight path that brings aircraft into National Airport. It does have those very effects you describe, backdoor barbeques. One can't live outdoors in the summers in Washington. Those enjoyable evenings are indeed disrupted.

I know, I hear from people in our area in Montgomery County. I hear them talking about it in shopping centers and grocery stores and our church at St. Bartholomew. I understand what you are talking about. That is the purpose of these hearings, to try to find a way to deal with it, not just to talk about it.

There has been a great deal of talk about it. The solutions are not perhaps as simple as the one on Interstate 495 near the Carderock Springs School where the highway pavement could be altered to reduce by 60 percent the zing of tire noise so children could concentrate in school and have a better study environment and be able to play on the playground without the noise deafening their

play. Now the tire noise has been reduced to a level where they can hear the aircraft noise. That is a problem we must deal with.

I don't have any questions to ask of either of you. I do appreciate your testimony. I assure you that, as I have told other panels, these are the first steps toward development by this committee in cooperation, I hope, with the administration, of a national noise policy that I expect we will act upon in the next Congress.

We have to begin. We have dealt with the other two elements of capacity in our aviation system, improving the air traffic control system to modernize it, keep it ahead of the state of the art, and to provide funding to expand airport capacity to accommodate the growth in aviation we have experienced since deregulation.

But the third leg, noise, will remain the impediment to growth in aviation. If we do not deal with it, even if the air traffic control system is fully modernized, and airports are built to accommodate the sophisticated growth in aircraft, if the citizens will not accept increased noise levels, then all that investment in technology and airport runways and taxiways will have been for naught.

This is an element I am determined to come to resolution with.

Mrs. MORELLA. We appreciate your leadership.

Mr. OBERSTAR. Thank you very much.

Mr. OBERSTAR. Mr. Brown, would you proceed for five minutes. I will have to break so we can vote.

TESTIMONY OF ALBERT BROWN, EXECUTIVE COMMITTEE, BOARD OF DIRECTORS, CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE

Mr. BROWN. Mr. Chairman and members of the subcommittee, CAAN, the Citizens for the Abatement of Aircraft Noise, appreciates and welcomes this opportunity to present to you its views on aviation noise policy. As you can see from our name, the generation of excessive noise by aircraft is the sole reason for our existence. I will skip mentioning the size of our organization since you have already heard that from your colleagues.

I would like to point out that our board of directors is composed of nine individuals. Three from Maryland, three from Virginia, and three from the District of Columbia. You have heard it said many times that aircraft noise is a difficult and multifaceted issue which your subcommittee and Congress will deliberate with considerable care to ascertain the best interests of the nation as a whole.

CAAN understands the need for air commerce to move people and goods rapidly and efficiently in the daily course of doing our nation's business. CAAN also understands that the well-being of our nation and the quality of life in many of our communities can be seriously degraded by aircraft noise.

On the one hand there is a cost to the air carrier industry for expenditures that must be made to reduce aircraft noise. There is also a potential cost to air passengers and to shippers if flights to some destinations are not made at the times they most desire. These costs and potential costs to the aviation industry and to its users are counterbalanced by the very real costs of aircraft noise to the many communities which have airports as neighbors. The costs

on both sides must be understood and carefully weighed. A balance must be struck.

The costs of quieter aircraft and engines in dollars can be readily determined. Potential costs to passengers and shippers are more elusive. There are alternatives for passengers and shippers because a flight to a particular airport cannot be made at a particular time desired. There are alternatives in terms of shipping early or later or alternative in terms of arranging business so that a few hours or overnight won't made that much difference.

The cost to communities and to the individuals who live and work in them are very real but very often difficult to assign a hard dollar value. Frequently there are no alternatives. For example, there is no alternative for children playing in my community, I could say our community, to play outdoors in the schoolyard, or for my neighbors to work or relax in our gardens.

The principal concern of CAAN is the Washington Metropolitan Area, and in particular, the Washington National Airport. However, many of the recommendations we will make apply to other airports. In fact, there is rapidly increasing activity among citizen groups in communities all over our nation to reduce the intrusion of aircraft noise into our lives. This activity by citizen groups is also strongly reflected by local elected political officials.

For example, our region has a Metropolitan Washington Council of Governments representing the 21 governmental jurisdictions. You have heard from the Honorable Betty Ann Kane from that organization. We in CAAN have been a strong supporter of the Washington COG. Both our citizens and elected officials recognized the degradation caused by our environment because of aircraft noise.

CAAN would like to have your subcommittee consider the following recommendations.

Mr. OBERSTAR. I am going to have to interrupt you to have a recorded vote on the House Floor. We will resume in roughly 15 minutes.

[Vote recess.]

Mr. OBERSTAR. The subcommittee will resume.

We will continue with the testimony from Mr. Brown. You were at the point of setting forth the guideposts that you would like the subcommittee or a national noise policy to follow. Please proceed.

Mr. BROWN. Yes, Mr. Chairman. Guidepost is a good word.

Number one, no legislation should prevent locally elected officials from responding to the needs of their constituents. Problems concerning airport noise are intensely local matters between an airport and its immediate neighbors. Each situation is different. Washington has an airport in the center of a densely populated area and my community was in existence before the Wright brothers. Some airports are located in relatively open country, and some recent construction to take advantage of the airport proximity.

Number two, the enormous social cost of aircraft noise should be studied and calculated and used to find a balance in the national interest between aviation users and airport neighbors. The damaging effects of noise on people; the lost sleep; the loss in sales value of homes under the flight path; the interruption of communications in homes, schools, hospitals, churches, workplaces and recreation—

all of these and more social costs have been demonstrated and must be weighed in the balance.

Three, the proprietary rights of airport operators to specify noise regulations for their own airports must be respected. It should be their duty to operate their airports in response to local conditions.

The 65 Ldn contour for noise is not a satisfactory measure of tolerable noise in a community. The contour containing people adversely affected by aircraft noise should be changed to a lower value, say 50 Ldn, or to a new metric which more accurately measures noise impact on people. Many people find their lives adversely affected at noise levels much lower than 65 Ldn.

For example, I live near the Potomac, nine miles from National Airport, that is well outside the 65 Ldn contour. Yet, my wife and I cannot sit on our deck and converse at a distance of six feet.

The use of the 65 Ldn contour makes it appear the number of people affected by aircraft noise is small, in the tens of thousands in any given city. It would be a damaging mistake to assume complacently only a few tens of thousands of people are involved. Many hundreds of thousands of people find their lives adversely affected by noise levels much lower than 65 Ldn.

Five, noise and pollution are by-products of the airline industry. This industrial waste is the responsibility of the airlines and should not be absorbed by those living under the flight paths.

Finally six, the noisiest aircraft (generally Stage 2) should be phased out as soon as possible, before AD 2000 at critical airports, and certainly before the noisy planes that are prohibited in Europe are added to the U.S. fleet.

Noise is a relative phenomenon. Loud and disturbing means louder than the existing ambient noise. Stage 3 aircraft noise is intrusively loud between 8:00 p.m. and 7:00 a.m.

In conclusion, the overall impact of aircraft noise is increasing (in spite of the introduction of some Stage 3 aircraft) due to rapid growth in the number of landings and takeoffs together with the increase in flights after 10:00 p.m. Each year a larger segment of our population is adversely affected. Citizens and their local elected officials are organizing to stop this form of environmental degradation. Their voices must be heeded.

Mr. OBERSTAR. Thank you very much for your testimony and your suggestions, very specific and very clearly stated, on recommendations for future action to be taken in a legislative package on noise.

What is the impression that people have who are members of your organization about how noise—let me correct that—how aircraft arrival and departure patterns are managed? People feel that they are managed with some respect for the concerns of citizens or very little respect for their concerns?

Do they think their views have been taken into account and the impact upon their lifestyle been taken into account?

Mr. BROWN. I can answer that question in two ways. One is that because of the unusual area in which we live where the aircraft go along the river, many people feel that if aircraft were diverted away from the river, even more people would be affected. So even those of us who live along the river feel that although we would

like the relief of diverting flight paths, the noise, more people would be impacted by noise.

The other side to that is that you ask if they feel somebody is looking out for them? They do not. They feel that nature has put the river there, but that the FAA has paid very little attention to two things.

One, where turning points and other noisy points are located. Secondly, that the aircraft do indeed maintain a flight path over the river and don't vary on either side and use the proper noise procedures.

Mr. OBERSTAR. Have you had discussions—by you, I mean your organization—with the FAA about the matter I have raised several times of safety and noise impact and discussed with the FAA other safe flight patterns that might have the effect of reducing noise or distributing it among other populations?

Mr. BROWN. I have not personally had. Our organization has had. I think in the organization this hasn't been a particular issue. The assumption, of course, that the FAA will insist that flight patterns be safe to fly.

Mr. OBERSTAR. There may be other safe patterns than the one chosen for a particular airport.

Mr. BROWN. Indeed. I think this goes back to my other answer. The river kind of constrains it. They feel where there might be other safe flight paths, that this hasn't been too carefully looked into or too carefully policed.

Mr. Chairman, I should say that some of this I have a background in because I was one of the top officials in the FAA. I was a GS–18 and director of system design. I think I understand the kind of thing that is going on. I would say myself I think that the act of 1958 gave the FAA the responsibility to promote air commerce with air safety, but did not charge them with being responsible for noise or other effects on the population. That is the way the FAA proceeded.

Mr. OBERSTAR. Yes, I think that aspect has come through clearly in these hearings, that the FAA is carrying out the law, and the law did not require them to do certain things, did not require them to take into consideration certain factors. Consequently, they did not.

To the FAA's credit, Mr. McDaniel testified earlier in this series that mistakes were made with respect to the expanded East Coast plan. We should have listened to people. There was no requirement for us not to. There was a requirement for them to go ahead on a path in which they proceeded.

But, there was no requirement for them to turn a deaf ear to local concerns, and that listening to people could well have alleviated their concerns, may have contributed to a better plan in the final analysis. At any rate, people would have understood what the whole picture was.

I think this hearing process, which is part of our public participatory government, is essential as an element of future noise policy.

Do you see any—drawing on your background of experience, and I am sure you have kept up with the literature, would you agree with the aerospace witness who testified earlier this week that

there are no foreseeable breakthroughs, major technological breakthroughs beyond Stage 3 the next 20 to 30 years?

Mr. BROWN. Mr. Chairman, I have been retired for some time. I can't say I have kept up. But as far as I know, I don't know any real technological breakthroughs or haven't heard of any beyond——

Mr. OBERSTAR. Stage 3. Getting to Stage 3 as quickly as possible for the whole fleet, and in some way that makes economic sense; managing flight patterns involving a public participatory process; and controlling local growth of industrial and commercial development on the ground are really the only options that we have for managing this noise issue; is that right?

Mr. BROWN. Yes.

Mr. OBERSTAR. Thank you.

Mr. Clinger?

Mr. CLINGER. No questions.

Mr. OBERSTAR. Ms. Molinari?

Ms. MOLINARI. No questions.

Mr. OBERSTAR. Mr. Ackerman?

Mr. ACKERMAN. No questions.

Mr. OBERSTAR. Thank you. We greatly appreciate your presentation.

Our next panel includes a very large delegation. Our colleague on the subcommittee Ms. Molinari has already spoken. We will also take testimony from Mr. Ackerman and Mr. Garaufis, Counsel to the Borough of Queens; Mr. Mitchell Clark, Counsel, Smock et al. in the suit against the city of Austin, accompanied by Charles Smith; Mr. John Pieratt, attorney at law in Austin, Texas; Ms. Jean Crisson, Arlington Community Association, Staten Island, New York; Caroline Aronovitz, Peachtree-DeKalb Neighborhood Group, Atlanta, Georgia; General William Moore, President, Nashville International Airport, accompanied by Samuel Bartholomew, General Counsel.

A very formidable list of witnesses here.

TESTIMONY OF NICHOLAS GARAUFIS, COUNSEL TO BOROUGH OF QUEENS; J. MITCHELL CLARK, COUNSEL, SMOCK ET AL V. CITY OF AUSTIN, ACCOMPANIED BY CHARLES C. SMITH; JOHN PIERATT, ATTORNEY AT LAW, AUSTIN, TEXAS; JEAN CRISSON, ARLINGTON COMMUNITY ASSOCIATION, STATEN ISLAND, NEW YORK; CAROLINE ARONOVITZ, PEACHTREE-DE KALB NEIGHBORHOOD GROUP, ATLANTA, GEORGIA; AND GENERAL WILLIAM G. MOORE, JR., PRESIDENT, NASHVILLE INTERNATIONAL AIRPORT, ACCOMPANIED BY SAMUEL BARTHOLOMEW, GENERAL COUNSEL

Mr. OBERSTAR. The gentlewoman from New York wishes to make a comment at this point.

Ms. MOLINARI. I wish to thank the members from Staten Island who have traveled this distance to express their concern for this committee and their continuing work for trying to achieve a better quality of life in Staten Island.

Mr. OBERSTAR. Thank you.

Mr. Clement, you have constituents.

Mr. CLEMENT. General Moore, retired four-star general who is president of our airport in Nashville, Tennessee. And also Sam Bartholomew, a very successful attorney who is the general counsel for the Nashville International Airport, is here as well.

And I have questions for both at the proper time. Thank you.

Mr. OBERSTAR. Our colleague on the full committee, Mr. Ackerman.

Mr. ACKERMAN. Thank you very much, Mr. Chairman.

I want to welcome all of our guests, particularly the New Yorkers and in specific, the Honorable Nick Garaufis from my county of Queens, New York. Nick serves as the counsel to our borough president, which is the equivalent of a county executive in most places, served as pro bono counsel to many Democratic minority committees in the New York State Senate, served pro bono as a counsel to yours truly when he set up his congressional office, and was the district office administrator of another one of our colleagues in New York as well. He comes well equipped with knowledge on this subject.

I am particularly pleased to include Samuel Bartholomew as one of my dearest friends and one of my wife's as well.

Mr. OBERSTAR. We will begin with Mr. Garaufis.

Mr. GARAUFIS. Thank you, Mr. Chairman.

I am counsel to the Honorable Claire Shulman, president of the Borough of Queens in New York. I would like to thank the Honorable Mr. Ackerman for his generous words. Mrs. Shulman is a colleague, a borough president in the city of the Honorable Guy Molinari, the borough president of Staten Island. Queens and Staten Island are in effect government of kindred spirits. She enjoys serving with Mr. Molinari a great deal. We are very happy to see his daughter as a Member of Congress taking his place.

Ms. MOLINARI. Thank you very much. The feeling is mutual.

Mr. GARAUFIS. The Borough of Queens, which has a population of 2 million people, serves as the home of two of the busiest airports in America, John F. Kennedy International and LaGuardia. These two facilities have a combined total of approximately 2,000 commercial flight operations each day of the year.

We appreciate the opportunity to testify before the Subcommittee on Aviation regarding the issue of establishing a noise policy for aviation in the United States. We thank you for taking the initiative to hold hearings toward that end. Your comments during the course of today and the AAAE comments on capacity two weeks ago in Crystal City indicate that there is a close nexus between noise policy and the overall problem of capacity at our nation's airports and in our skies.

Any local official who has a busy airport in his or her jurisdiction, not to mention two, knows full well that aviation is a mixed blessing. The failure to phase in quieter aircraft and retool noisy aircraft engines with noise muffling equipment which is now available and the ground congestion which surrounds any aviation facility are but two of the disadvantages of having an airport located near homes, schools and hospitals.

Added to these general problems, we in Queens have a special distinction of serving as the home of the largest air cargo facility in the Western Hemisphere at John F. Kennedy International Air-

port, which is also the number one passenger gateway to America. As a result, eighteen wheelers, warehouses and even an alien detention facility have invaded once quiet residential communities in southern Queens.

Offsetting these problems are the jobs and businesses which aviation generates and the economic vitality which results. Our airports are responsible for putting more than 50,000 people to work in Queens. Without these benefits, there are very few reasons that we can give to an overburdened community as to why it should suffer the daily barrage of noise and congestion which airports generate.

Borough President Shulman and I have worked with the FAA over the years to deal with environmental and other problems generated by aviation. Its local leadership, especially Eastern Regional Director Daniel Peterson and Deputy Regional Director William Handel, has demonstrated a high level of professionalism in all our dealings.

However, despite our successes to date, we must again look at the problems created by aviation in the broader context of the community and seek to implement the available technology to diminish the adverse effects of noise in residential areas.

The magnitude of aircraft noise in the New York region mandates that we take steps in advance of the creation of a national noise policy. Accordingly, Mrs. Shulman has recommended to the Port Authority of New York and New Jersey which operates our three metropolitan area airports (including Newark) that its Board of Commissioners formally phase in a ban on Stage 2 aircraft. Specifically, we have urged that the Port Authority require 100 percent compliance with Stage 3 noise standards by all aircraft utilizing Kennedy International, LaGuardia and Newark International Airports no later than December 31, 1995.

In addition to urging local solutions to the noise problem, Borough President Shulman respectfully calls upon Congress to take action to achieve the same goal nationally. We are aware that several small Southern California airports have already banned Stage 2 aircraft operations. As additional airports establish such limitations, those which do not will be further burdened by Stage 2 equipment which is barred elsewhere.

This makes it all the more essential that jurisdictions such as the Borough of Queens with established airports and significant noise problems move forward to improve their environment using available aviation technology. The problem of forcing airlines to shift the burden of noisier aircraft to jurisdictions without local Stage 2 aircraft prohibitions, and the potential proliferation of varying local noise regulations, makes the need for Federal legislation acute.

Such national legislation should require the retrofitting of all Stage 2 airplanes with Stage 3 engines or the installation of Stage 3 hushkits no later than December 31, 1995, thereby providing nationwide mitigation for this problem at its source. We understand that hushkits to modify engines and reduce noise levels to Stage 3 limits are already available for installation in many types of Stage 2 aircraft. We also understand that some airplanes can be retrofitted with new Stage 3 engines.

We also request that Congress immediately prohibit initiation of any new Stage 2 operations by implementing a "non-addition" rule similar to that already enacted by the New York/New Jersey Port Authority on a limited basis in connection with new arrivals or departures during early morning hours, namely, from 12:00 midnight to 6:00 a.m.

Finally, we urge that Federal legislation be enacted to provide substantial subsidies from the $7.6 billion currently available in the Airport and Airway Trust Fund to assist airlines with the retrofitting program.

I would like to make a few comments, Mr. Chairman, about something which was in the newspapers recently and deserves some explanation. Much attention was drawn recently to the fact the Borough President Shulman and New York City Mayor David Dinkins requested the FAA Eastern Region to utilize an FAA authorized but infrequently used departure procedure at LaGuardia Airport avoiding the tennis stadium in Flushing Meadows-Corona Park.

During days and hours of play, the FAA agreed to utilize the existing Runway 13 "straight out" procedure which is part of its regular set of options for LaGuardia Airport operations, rather than "Flushing Meadow Park climb" which has been used for the last 25 years as a noise abatement procedure. That procedure was developed at the request of the Queens Borough President.

Why did we request this assistance? Because the U.S. Open brings to the Borough of Queens and the city more than $100 million in economic activity during its two-week session each summer. The city can ill afford to lose this important source of international recognition, employment and economic benefit. The noise which the planes generated during the tournament was so overwhelming in past years that the United States Tennis Association faced the sober choice of satisfactorily resolving the problem or having the USTA leave Flushing Meadows-Corona Park and the city altogether.

After extensive discussions last spring with the FAA, the Port Authority of New York/New Jersey and the aviation industry, Borough President Shulman and Mayor Dinkins made a request which effectively shortened the route for planes departing on Runway 13 but which did not require development of any new departure procedure on the part of the FAA. The FAA agreed to implement the plan after determining that it had no adverse safety or capacity impacts.

We learned from this experience that the "straight out" procedure impacts fewer people than the existing noise abatement procedure for Runway 13 operations. It appears to do so without adversely affecting to a greater degree than usual any communities in Queens or outside the borough.

Nonetheless, whichever procedure is used, the people of Queens will continue to live with aircraft at very low altitudes. Under either takeoff plan, aircraft noise will remain a significant problem for thousands of residents in the Borough of Queens unless modifications are made to aircraft engines. Hence, mitigation of aircraft noise in the long term must occur at its source—by the creation and utilization of an all-Stage 3 airplane fleet.

Borough President Shulman recognizes that the best way to achieve this objective is to establish a tough national noise policy. These hearings constitute an essential step and we thank you for taking this initiative.

I will be happy to answer any questions you may have.

Mr. OBERSTAR. Regrettably we have another vote on the House Floor. I think we will have to recess and cast our votes and return as quickly as possible.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume.

Let's continue with our next witness. Let's continue with the New York group, Ms. Crisson. Let me again urge the witnesses as much as you can possibly do so to stay within our five-minute rule. These votes are stretching out this day and getting our, getting time constraints even more critical for some witnesses who had flight plans and wanted to get back to their homes.

Please proceed.

Ms. CRISSON. Thank you.

My name is Jean Crisson. I am representing communities in the northwest section of Staten Island. We have a committee that is called FATE, which means Fight Airplanes Threatening Environment. I am corresponding secretary of the Arlington Community Association and a resident of Arlington, Staten Island for 36 years.

We are here to protest the conditions under which we have to live every day. Frustration, anxiety and total disgust, due to the fact that planes departing Newark Airport in New Jersey fly over our homes so low that children three years old recognize the logo on them.

These planes have been clocked between 18 and 20 seconds apart. One morning recently from 9:00 a.m. to 10:15, 51 planes passed, low and loud. We hear them approach, fly overhead, and then we have to endure the after-sound. Planes at the airport turned away from our areas while warming up on the runways, which is only three miles away, cause our homes to shake from their foundations.

The overhead planes disrupt our lives. They have taken over our lives. We cannot speak on the phone. TV watching has become nil. You can't read the daily paper. We have no rest. Planes come over constantly. 1:30 a.m., 3:30 a.m., and 6:00 a.m. is usually the start of a day of planes. We lie in bed anticipating a plane arriving. We wonder if it will make it.

There are 13-story buildings in the area of the departure route. I have photographs of these buildings and of the planes, their proximity to these buildings. People actually scream at times when they see these giants in the sky approach. Many senior citizens live in these buildings. Must we wait for a plane crash before something finally gets done? We certainly pray it doesn't come to this.

Back in 1985 planes were so bad in our area with the noise that they generated, but since January of 1990 there is no comparison. I submit correspondence from FAA sent to our then Congressman Guy Molinari dated July 10, 1985, wherein it is stated by Joseph Del Balzo, director, "FAA shares your concern, agrees, requested Port Authority to seek immediate and long-term solution to Staten Island untenable noise situation."

The FAA further states that the Port Authority is the agency with primary responsibility for noise resulting from aviation activity of its Newark facility. It appears that the FAA is passing the buck, so to speak.

Also stated is the fact that they, FAA, assures revisions will receive this agency's full support. Well, subcommittee members, remember this letter was dated 1985. "Immediate" in my dictionary means instant. Five years have passed. I would like to read the dictionary that the FAA refers to. They may write their own. I looked up the word "untenable" in mine, and it does not appear. Yet, this word is used by the FAA to describe the noise we endure. This is 1990. How immediate is immediate? Certainly not since January 1990.

Our problems have only escalated. Don't you agree?

Residents in New Jersey, where the airport is located 30 to 40 miles away—and incidentally, where one of their own Senators reside, Senator Bradley in Denville, complained to their political leaders. As a result of their complaints, FAA made flight adjustments. Our question, where was that famous impact study? Was it done? This is always the put off we get. The words of the FAA, study, study, study, never answers, never results.

I present evidence in a booklet entitled, "1989 Airport Highlights" published by the Port Authority. On page 7 it is quoted, "intended to relieve noise levels in Cranford, Colonia, and Scotch Plains. In January 1990 FAA fanned departures going westbound from a point 5 to 10 miles south of Newark. Continuing complaints to Port Authority and FAA raise questions as to the effectiveness of these changes."

Well, subcommittee, this 5 to 10 miles is over our areas. In their words, they doubt the effectiveness. We don't doubt the effectiveness. We know it, as do thousands of other residents in the northwest section of Staten Island. We know it for a fact.

Tape recordings have been sent to local politicians, the mayor and governor of New York and FAA of the horrendous noise these planes create. Governor Cuomo is concerned about the decibel of noise created by car radios and car horns, yet these planes evidenced levels of 100 plus. Construction work has to cease on weekends to afford individuals peace and quiet. What about our peace of mind? None. The construction industry should appeal their case and say, if planes fly, we can work.

Many residents have health-related problems that they feel have been aggravated by the airplanes. High blood pressure, digestive problems, ear problems, headaches, but most of all, anxiety, stress, and fear. Our area of Staten Island has been labeled cancer alley. How much do these planes with their foul emissions which evidently contribute to this cancer situation?

Our homes, autos and clothing have been seen with fuel droppings. We grow flowers and vegetables in our gardens. How can we safely eat those vegetables? What about birth defects prevalent in our area? Let's investigate the percentage of them. People young and old are affected. Children trying to study in our schools, adults trying to study for job advancements. Just trying to type this testimony, it is unbelievable. We can't get a good night's sleep. Forget it.

I don't know how to end this speech with so much more to say. We don't have the answers. We didn't create the noise problems over our areas. We hear suggestions of quieter and less polluting aircraft. We urge your committee to use all the power entrusted to you to force and demand the FAA to do something now so in our lifetime we will see results of this hearing.

Thank you.

I would just like to add something, please. I understand that an environmental assessment has been suggested. We have been told by the FAA that they were going to use out of Newark a three standard instrument departure. This is not in evidence in our area. We have not seen any changes in our area. This was supposed to be implemented in January of this year. We suggest that this be used now to see if it will give us some relief.

And if this goes into effect, we still would emphasize the need for an environmental impact study for future use. But at the present time we request that this three standard instruments be implemented to see if we can get some relief.

Thank you.

[The prepared statement of Ms. Crisson appears on p. 812.]

Mr. OBERSTAR. Thank you very much.

You also submitted very extensive documentation, which we will receive for the committee records, and which I found very interesting as I read through it.

Let me assure you it is our objective to try to resolve this problem in our lifetimes, and we are going to make a very strong effort toward that purpose.

The Chair recognizes the gentleman from Georgia for a presentation.

Mr. JONES. Thank you, Mr. Chairman.

I would like to introduce Ms. Caroline Aronovitz, who is representing about 19,000 residents in the Fourth District of Georgia who live near the DeKalb Peachtree Airport. It is the second busiest airport in the State of Georgia, the busiest, of course, being Atlanta International, which is, of course, one of the biggest in the world.

The problems of suburban growth around this airport and the growth of the airport have led to problems, and she represents, in fact, her parents have been leaders in this fight. Caroline lives up here now, but is representing them, and a coalition of neighborhood groups who are concerned about this noise problem.

Right now the FAA and the county and the neighborhoods are cooperating in doing a part 150 study, which was in part at our urging and involvement, and thank you, Caroline, for coming.

Mr. OBERSTAR. Thank you very much for that introduction.

Ms. Aronovitz.

Ms. ARONOVITZ. Good afternoon.

Thank you, Mr. Chairman, and thank you, Congressman Jones.

On behalf of my neighborhood, I would like to thank you all for holding these hearings on federal noise policy.

I am Caroline Aronovitz and I have spent most of my 23 years in DeKalb County, Georgia. I have been asked to bring you a message from 19,000 families living in 25 middle class neighborhoods in the

northern suburbs of Atlanta within a three mile radius of DeKalb Peachtree Airport.

Known as PDK, DeKalb Peachtree Airport, a general aviation airport, is the second largest airport in Georgia. Disruptive noise from PDK aircraft severely impacts our neighborhoods. We have recommendations for changes in the federal noise policy that will relieve our noise problem.

First a World War II Navy air station, PDK was deeded to DeKalb County in 1958. That year there were 25,000 operations at PDK, all small, single-engine planes. Neighborhoods surrounding the airport were already firmly established. No attempt was made to restrict further residential development.

By 1978, the number of operations had increased to 143,000. Corporate jets had replaced many of the small planes. The FAA and the county proposed that the longest PDK runway at 5,000 feet be extended to 6,000 feet to accommodate "100 percent of the basic transport fleet."

Jet noise had already become a problem, so the community vigorously opposed this expansion. The plan was placed on the back burner.

About this time our once-pleasant, small airfield was designated a reliever airport for Hartsfield, making it eligible for a different pot of FAA funds for airport development. This pot appears to be limitless for infrastructure development but devoid of funds for noise abatement.

In 1986, the 1,000 foot one-way extension for PDK's longest runway was again proposed. But now, in order to bypass residents' input, safety was given as the reason.

The FAA knew that safety, like apple pie and motherhood, is a tough thing to fight. FAA records note that the existing runway did not satisfy safety standards for certain jet operations. These planes were three of the largest, noisiest jets then based at PDK.

Why had the FAA allowed such planes to operate at PDK if there was, indeed, a serious question about safety? The planes in question, Jet Start I and Gulfstream II and III, have part 36 dBA ratings that even the FAA recognize as too loud for areas of homes, schools, and churches. Apparently, the FAA chose to ignore the negative environmental impact of these expansion plans.

The community, realizing that a 6000 foot runway would attract more large, loud jets, went to court asking that an environmental impact statement, an EIS, precede the runway extension. The community lost. In late 1987, PDK's 6000 foot runway was completed.

Opposing the FAA's expansion plan for PDK was an expensive and disheartening experience for our community. Sadly, within a few months, the Atlanta Regional Commission announced in its 1988 status report that: "DeKalb Peachtree Airport has substantially exceeded forecasted operations levels for 1989 in 1988."

The ARC also noted that the airport had become "increasingly relied upon as a destination by the technically more advanced aircraft."

Subsequent increased aircraft noise and complaint calls over the last two years finally forced the county, following the suggestion of Fourth District Congressman Ben Jones, to initiate a part 150 noise study.

This woeful tale places the burden of guilt with an FAA that has demonstrated little concern for the spirit or the legality of the National Environmental Act. The FAA has encouraged with funding or had knowledge of the following additions to PDK over the last few years: New air traffic control tower, improved taxiways and pads; new navigational aids; more t-hangers; more fixed based operators; improved runway lights; along with the 1000 foot runway extension.

These changes encourage increased PDK operations. Yet, the FAA knew about the densely populated areas adjacent to the airport.

The FAA also knew something else that makes this development irresponsible. The FAA knew that Hartsfield arrival and departure traffic patterns crisscross this very same section of DeKalb County, keeping PDK aircraft at low elevations. Please remember, also, that Hartsfield competes with Chicago O'Hare for the title of busiest airport in the world.

Last week FAA traffic controllers from the Atlanta tower met with a group of our community representatives and airport management and pilots. They revealed that Hartsfield traffic patterns over PDK and DeKalb County have not been reevaluated or changed in at least 19 years. Minor alterations have been based only on changes in Hartsfield's commercial fleet. Radical changes, small planes to corporate jets, in PDK aircraft have been ignored.

Nineteen years ago, PDK had very few jets. In 1988, there were 250,000 operations at PDK. Unfortunately, the PDK tower chooses not to provide jet operations figures, but our ears tell us that the jet percentage is high.

Hartsfield arrivals and departures, like netting thrown over our neighborhoods, trap those 250,000 PDK aircraft, restricting them to lower elevations for longer periods of time over our densely populated community. The result is incredible noise that disrupts our lives, interferes with conversations, learning and probably causes more physical and mental illness among our residents.

Somewhere, you have probably heard by now that the 1996 summer Olympics will be held in Atlanta. Our community shares with Atlanta the pride and celebration of this extraordinary event, but we have concerns.

Our new airport director at PDK tells us that in 1990, operations and activity at the airport are already up, and so are complaint calls.

As we close in on 1996, the amount of international flights into our area will become staggering. We must be prepared to head off further noise damage. Therefore, we offer several urgent recommendations to decrease aircraft noise in our area.

One, with the coming of the Olympics, within the next six years, the FAA must examine and restructure the current Hartsfield arrival and departure routes over the Atlanta metro area. Authorities tell us routes could be redesigned to depart straight east to 20,000 feet for 50 miles and then turn north. This would carry much of the noise beyond the populated areas and allow PDK aircraft to attain greater altitudes.

Two, legislation should be enacted that clearly allows airport operators to exclude aircraft from their airports when the noise levels exceed limits as defined in Part 36 of the FAA regulations.

Three, legislation must be enacted that separates the environmental responsibilities of the FAA from the airport development sector. Assign the environmental function to the Environmental Protection Agency. The EPA must be given the power to be the advocate of the environment, to stop the damage and destruction of communities like mine. Unfortunately, experience has shown that in any struggle between airport development and environmental impact within the FAA, there is no contest. Development always wins.

Four, incentives should be given to owners of airplanes with loud engines to retrofit those planes with new, quieter engines or to replace old aircraft with newer models. Incentives could include tax breaks or low interest loans.

If a financial incentive plan doesn't work, airport owners should have the power to levy fines and penalties against aircraft owners and operators who refuse to cooperate.

Five, finally, Congress needs to clarify the meaning of "interference with inter-state commerce" for the FAA. Inter-state trucks are now required to go around certain cities; inter-state aircraft that emit particular decibel levels should be restricted, also, from certain airports during night hours. Inter-state aircraft above particular decibel levels should be restricted from certain airports at all times.

The FAA never considers that there are many residents whose ability to work at jobs that involve inter-state commerce is harmed when they are unable to sleep at night because of low-flying, loud aircraft.

Congressmen, low-flying planes are not only noisy, they are dangerous. Residents in our 25 neighborhoods have done a lot of praying lately that those low-flying jets will never lose power or have other mechanical problems. There is no place for them to go but into our homes.

This past year, neighbors watched in horror as an aircraft exploded over their home, covering a child on the ground with gasoline, and spewing airplane parts and human remains over the neighborhood.

Help us to prevent more disasters. Help us to retain the quality of life we once had in our neighborhoods. We have made workable suggestions for changing a federal noise policy that is damaging our environment. The FAA must rework Hartsfield traffic patterns and make other changes that will bring our neighborhoods relief.

Thank you.

Mr. OBERSTAR. Thank you very much for your very fine and very compelling statement.

Our next witness is General William Moore of the Nashville International Airport.

Would the gentleman from Tennessee like to make an introduction?

Mr. CLEMENT. General Moore is President of the Nashville International Airport, and accompanying him is Sam Bartholomew, successful attorney and general counsel for the airport.

General Moore?

General MOORE. Mr. Chairman, the Metropolitan National Airport Authority appreciates this opportunity to express its views to this subcommittee.

The goal of a national aviation system was established long ago by the United States Government. With that goal, our Nation made the decision not to have local and regional aviation systems. Our national system links our Nation to world markets. It meets the needs of interstate commerce and individual travelers.

In addition to providing essential transportation services, the aviation industry contributed 5.6 percent of our gross national product and 8.4 million jobs in 1989. As this industry continues to grow, greater benefits will accrue to our local, regional and national economies. Our national noise policy must not detract from that growth; it should add strength to this vital segment of our national economic life.

Local and regional air services for passengers and cargo are interlocked in our national system. Delays and restrictions at one airport directly impact services at other airports. That is the case today, and it will continue to be the case as we move forward during the coming months and years.

This Nation needs a national noise policy if our goal of a national air system is to continue to meet the demands of consumers and business. Most of the major issues related to that policy have already been identified.

The noise task force established by both airline and airport representation and the AAAE and AOCI are addressing Stage II aircraft phase out and airport operating restrictions.

I would simply emphasize that Stage II aircraft today represent a significant portion of the domestic airline fleet and will be in use in diminishing numbers over the next 10 or so years as the airlines reequip with Stage III aircraft.

During that time period, airports that restrict the operation of Stage II aircraft will impose added noise on communities whose airports do not have such restrictions.

My purpose here today is to deal with what I believe is the core issue upon which the success of our noise policy will rise or fall.

That issue is the need to develop better ways to respond to the very valid concerns of property owners near airports who are impacted by noise.

The concerns of property owners are generally the same, airport to airport. But the solutions vary widely. As a result, a hodgepodge of different airport operating restrictions, locally imposed in separate communities, add up to a nonsystem rather than a national system.

As one who is now involved in implementing one of the more proactive noise mitigation programs in the United States, I want to share some local concerns with you, and make recommendations that respond to them.

Property owners impacted by noise may not understand the technical aspects and expense of Stage III aircraft. But, they do know that these aircraft are quieter and they want them in operation at the earliest possible date.

Homeowners impacted by noise in Nashville know what a part 150 program is, and they are not entirely satisfied with that program. As a general guide to a national noise policy, we should keep fairness in mind.

This policy will determine the future life style and financial status of many individuals and families around airports. We are asking them to modify their homes. In some cases, they are moving from the home and the neighborhood they chose.

Our national noise policy should include funds for direct moving costs in the part 150 sales assistance program. The sales assistance program is a major component of the Nashville, Tennessee, part 150 program.

There are 2,500 Nashville property owners who are eligible for sales assistance. Many of the people who want to use this program to move away from airport noise, question the program fairness.

This program is voluntary as are all components of our part 150 program. But the simple fact is that the voluntary sale of a home by an owner who cannot bear the noise means that the owner has to move. It is unlikely that this move would take place, except for the impact of noise. Although these people receive market value for their property, they must bear all moving and finance costs. I suggest that the expense of moving should be incorporated into the part 150 sales assistance program.

As a second step, a national noise policy should recognize that many property owners near airports have lived in the area for many years. The majority are not wealthy, and many live on fixed incomes. The interest rate on their present mortgage is likely to be lower than the rate on the new mortgage on the home to which they elect to move.

In those cases, it appears that our national noise policy should extend government programs that provide low interest mortgage rates to these homeowners.

The fairness and logic of this kind of assistance are compelling. Property owners are keenly aware that rates are significantly higher today than when they made their first mortgage. They understandably view as unfair a program that requires that they shoulder the heavier mortgage load.

Our national noise policy must also anticipate future expansion of airports to meet capacity. The policy should seek to direct future land use with appropriate incentives at the federal, state, and local level to reduce the number of homes around airports by redevelopment to compatible uses.

Our policy should encourage and support research by qualified institutions leading to solutions to the issue of noise, including aircraft design, home construction, land planning, air traffic control, and human factors connected with noise tolerance.

Examination of the FAA Part 150 program should become a prominent part of the formulation of a national noise policy. The guiding light of such examination should be fairness to all.

Mr. Chairman, Mr. Bartholomew, my counsel is here and he can give specific information on potential legislation on the mortgage matters which I have discussed.

Thank you, Mr. Chairman.

[The prepared statement of General Moore appears on p. 869.]

Mr. OBERSTAR. Thank you very much.

We will depart from customary procedure at this point and recognize the gentleman from Tennessee for a few moments since he has another commitment.

Mr. CLEMENT. General Moore, I first want to say, due to your leadership of the airport authority, we have been able to avoid many problems in Nashville that have been hard hit in other cities and communities across the Nation.

I commend you for that, but that doesn't mean we don't have problems, even with the noise problems being impacted by the expansion of our airport. But it has been a real plus for the Nashville area having a first-class airport and the people of the Nashville area appreciate the airport very, very much. And we have a very excellent record, thanks to you and others.

First, I want to ask you about the sales assisted program, and I know you have already mentioned that you do feel like when it relates to the sales assisted program that they should have relocation assistance that they don't have now.

General MOORE. Yes, sir.

Mr. CLEMENT. And any information you want to share with the record, please do so on that, because it would be helpful.

General MOORE. Yes, sir.

Mr. CLEMENT. Also, what about a permanent noise monitoring system, for example, in the Donaldson area. I know some of the people in the Donaldson area feel like by these temporary monitors when they are moved, it really doesn't give a real record of what is going on in the community.

General MOORE. I will try to address those, Congressman.

We have two programs in Nashville which involve the acquisition, actual acquisition of properties. One of these programs are properties that we acquire in the safety and extended approach zones of the end of runways.

When those people's properties are acquired, we ultimately move the property away from the runway, and in those cases, they fall under the government Relocation Act, and they are fully reimbursed for all costs associated with their having to move to a new location.

The sales assistance program, which also, if it is elected voluntarily by the homeowner, involves that homeowner having to move from his house to another location.

The difference between those two programs is that sales assistance is intended to continue to maintain a community rather than to move a community, as is true in the former case.

But these people do not understand and, frankly, we do not, either, why they should not receive some compensation for the expenses which they have to bear when they move to a new location, and although they do get fair market value for their homes, they do have to take on considerable additional expense in moving their families and belongings, in paying points on a new mortgage, and then being burdened with a considerable higher mortgage for years to come over what they had had previously.

And many of those people, as I pointed out, are not wealthy. They do live on fixed incomes. Some sole income is their social se-

curity income, and we believe strongly that something should be done to assist those folks.

On the noise monitoring, we have been in quite a discussion, as you implied, Mr. Congressman, over noise monitoring, permanent noise monitoring system in the Donaldson area, north of the airport.

It is our belief that we should move in that direction, but we believe that the cost and maintenance and the monitoring associated with a permanent system far exceeds the benefits which we or the community would derive from it. And it would be an added cost within our Part 150 program, which would take monies away from what we believe are more effective noise mitigation measures.

We are moving now, and we are acquiring several mobile monitoring systems so that we can move them about the end of the runway and in the community. And when we have a specific request from a homeowner that he would like noise over his home monitored, we can take our system out there and then tell him exactly what the decibels are over his home. And we believe, sir, that is a more efficient and better answer.

Mr. CLEMENT. Thank you, General Moore.

Very quickly, Mr. Bartholomew, under the Community Reinvestment Act, banks help out in situations like this where they provide low interest loans.

Can you explain how banks become involved, and have you contemplated any options that banks or the Federal Government could take to improve the program?

Mr. BARTHOLOMEW. Thank you, Mr. Congressman.

Two quick suggestions for your committee that I think may work.

The first one would be in the tax exempt area. If the Internal Revenue Code Section 103A or Section 142 could be amended, what we do is open up the mortgage subsidy bond area for homeowners in these impact areas. The other section deals with the exempt facility bonds.

Now, right now, you got to be a first owner, more or less; three years you have not owned a home to qualify. Therefore, most people in noise areas around airports wouldn't quality. But that is a tangible way, a practical way, of getting some subsidy to these mortgages, and in a lot of cases in Nashville. For instance, the 3,000 home owners effected, most of them are older with low rate mortgages.

Now, another—that would cost the Federal Government some money, but not much when you look at it nationally, I don't believe.

The other idea may be more practical from a fund saving, and that is a self-help idea.

You are probably well aware that the banking regulators today have much more clout than they did a few years ago, and as a bank director, I can tell you that the Community Reinvestment Act, CRA, is a very real examination for banks.

If we could get the comptroller, Comptroller Clark, to put in the Community Reinvestment Act that banks who participate in mortgages to homeowners and these impacted areas would, in fact, be credited with community reinvestment points, then I think you

would see the local banking community, financial institutions come forward and give some low rates to these impacted citizens. You might have to put——

Mr. OBERSTAR. We are going to have to interrupt at this point. I am sorry but we are down to four minutes relating to the vote on the House Floor.

The subcommittee will stand in recess briefly, pending this vote.

[Recess.]

Mr. OBERSTAR. All right. Let us continue now. We will take Mr. Clark.

Mr. CLARK. My name is Mitchell Clark. I am an attorney from Texas, here along with my law partner, Mr. Smith. Mr. Pleratt is counsel in one case with us in Austin.

I am not going to bore you with trying to sum up our statement; you have it for your reading pleasure. What I want to do is hit a couple of highlights that somehow were omitted from that report.

My firm represents plaintiffs. We represent the people that live around the airports. We have got a severe problem in Texas. We are involved either in a consulting basis or otherwise, in the Austin concern, DFW, and now recently San Antonio.

Noise, as you know, is a problem. We have developed some issues and some concerns I don't think that this committee has been made aware of in the last few sessions that you have had, and we are going to try to do that here in the next three or four minutes.

There is no doubt a need for some type of federal regulation concerning airports—I am just speaking from the plaintiffs' bar, that is needed. For instance, in the city of Austin, there is supposed to be a new airport built. If there is not some type of federal guidelines with respect to land use controls, what is going to happen if that new airport is to be built, it will be built in part with money from the Federal Government.

If the city of Austin does what it has historically done, and that is not provided any kinds of compatible land uses with regards to its current Robert Mueller Airport, what you guys are going to end up doing is paying for the same piece of real estate twice, once upon initial land acquisition, and again for some type of noise abatement or to move people that eventually move into the area.

That is silly, and obviously it is a waste of money. That needs to be addressed I think on the national level.

The other idea that we had, and we always seem to face, is that people always raise the issue, well, gee, you were there, you knew an airport was there when you moved in. That is true. The point being is is that the average citizen does not know what noise does to your body.

A solution that we would have would be to formulate some type of federal statute, if you could do this legally, to require people living, let's say, within 65 LDN zone or better, some type of disclosure statement when they buy that home.

Along the same lines down the Gulf coast, when you buy certain homes in certain areas, there is a big federally required disclosure statement. You are buying a home in a flood zone, potential flood zone. You may not be able to acquire flood insurance. People know that up front. They don't know what noise does to you when they purchase a home within a 65 LDN zone or better.

We have got to have some informed cooperation between us, the citizens, people living around airports, the FAA and the EPA.

Case in point: In Austin, Texas, Bergstrom Air Force Base has now become an issue. Like a lot of bases, it may be closed. Well, what the city council of Austin is doing is now they are deciding that they may want to move Manor Airport to Bergstrom Air Force Base.

Whether the base remains open or closed, that is not the issue. The issue is can Bergstrom become a municipal airport in a fairly large town.

There are, for instance, toxic waste sites within Bergstrom Air Force Base that must be cleaned up. If a municipal airport is moved to Bergstrom, Austin's city dock will have to be moved.

Those are two environmental concerns that right from the gate would negate even thinking about putting in a municipal airport at Bergstrom Air Force Base, yet we seem to not to be able to get any cooperation from EPA and FAA.

We will get to aviation concerns. The environmental concerns knock out Bergstrom Air Force Base.

With that, there is one very special issue that you guys have not been made aware of, and I am going to allow a couple minutes to my law partner to cover that with you.

Thank you.

[The prepared statement of Mr. Clark appears on p. 781.]

Mr. OBERSTAR. Mr. Smith, welcome.

Mr. SMITH. I thank you for this opportunity to address this committee on some very special concerns relating to aviation and noise.

In connection with growing concerns nationally over the effects and impact from noise generated from flight operations in and around our Nation's airport, questions abound not only about noise and its deleterious effect on people, but in certain urban areas where commercial aviation and municipal development have unwittingly set a course that have not sufficiently assessed the implication of noise and urban economic development on the community at large.

An emerging issue has been raised surrounding the rights and expectations of citizens to enjoy their livelihood and property without the same being adversely diminished by noise and its unique effect upon certain groups. In particular, the concerns now have focused on civil rights implications in connection with airport development, and its expansion in an ever growing market.

The extent to which the elderly, minors and others are particularly affected is a serious matter that warrants examination. Moreover, in addition to health concerns, the general implication from potential displacement in relation to adequate housing and voting patterns can have an unforeseen consequence.

Regulatory changes among and involving federal agencies and their relationship with local governments could provide some assistance. Thus, Mr. Chairman, I appreciate the opportunity to speak about the concerns involving noise, and the broad concern we believe that noise needs to be addressed in order to coordinate some consistent policy of noise and the federal aviation policy.

Thank you.

Mr. OBERSTAR. Thank you very much for your observations, which I also find very helpful.

Mr. Pieratt, do you have any comments to make at this point?

Mr. PIERATT. Thank you, Mr. Chairman, yes, sir, I do.

I know there has been some discussion about having a mandatory participation of response on part 150 studies and mitigation costs. I would just simply add, I think there has to be a role for the private citizen to petition his local proprietor to perform these Part 150 studies.

In Austin, our city has never performed a part 150 study, and the airport has been there since 1930 or thereabouts, only until there was state legislation passed that mandated they do so. And we have some 30,000 people living within the 65 LDN plus noise contours, plus in excess of 10,000 households and 5000 students. It is a major issue—it is the issue? Austin, Texas, at this time.

Thank you.

Mr. OBERSTAR. Thank you.

General, I read with some interest your statement, page 5. Two observations: You suggest that an expense of moving should be included in the part 150 compensable program. Second is you say that people receive market value for their property. That is a statement of experience that you have had in acquiring property in areas adjacent to the airport?

General MOORE. Yes, sir.

Mr. OBERSTAR. What happens with those properties when they—are they acquired by the airport authority and then disposed of, or are they being sold to other homeowners who occupy them?

General MOORE. In sales assistance, sir, air authority port has an MIA appraisal, two appraisals on each property, and based upon the highest of those two appraisals we establish a market value for that home, that market—that home then goes on the market by the home owner, and in a contract with the airport authority, wherein if the home has not sold in six months, then the airport authority will market it for four months.

If at that time it was not sold, then the airport authority will buy the home at the appraised value, and then ultimately will dispose of it.

Mr. OBERSTAR. Has the decline in real estate value common to other areas of the country, particularly here in the Washington area in the last several months affected the Nashville area as well?

General MOORE. Yes, sir, it has, and it has caused I think something of a misperception on the part, and an understandable one on the part of some of our neighbors around the airport who are less apt to recognize that less value received for their home is a function of the marketplace as opposed to being a function of the noise created, which they tend to believe, and I think a little bit of both is true.

Mr. OBERSTAR. But in general, it would appear from your statement that if market value is being paid to people who sell in that market and that market value reflects area wide market value, there is not a significant diminution of property value for those who live near the airport.

General MOORE. I believe that is a correct statement, sir.

Mr. OBERSTAR. Now, the expense of moving, that is something I would respond to as a matter of fairness, and I would be very sympathetic to it, the question is where do we get the money?

General MOORE. I don't think there is any question but that solution, and perhaps the solution of finding a low interest rate mortgage for some of those folks is going to cost more money, absolutely.

We at Nashville believe it would be worth it, and we can—I have no answer as to what the cost would be across the nation with this kind of program. It would not be great in Nashville. But we believe that it should be done in fairness to those people.

Mr. OBERSTAR. Now, supposing we were to, in the best of all worlds, put into place the sales assistance program with the mortgage subsidy and the moving costs, fair market value that you have suggested. What do you think it might cost to move those 2,500 property owners?

General MOORE. The 2500 property owners wouldn't all probably qualify for the mortgage assistance program anyway. Many of them would, most of them would. I would think that we are talking about something on the order of $1,000 to $10,000 per property owner.

Mr. OBERSTAR. That is a pretty sizeable amount of money right there, just in one community, a relatively small community.

General MOORE. Yes, it is.

Mr. OBERSTAR. Second point, supposing then those homes were acquired and people moved out, what statutory authority is in place to assure that there won't be a new wave of people moving in and we revisit this issue all over again as Mr. Clark, Mr. Smith, and Mr. Pieratt were suggesting? Should we have something like the coastal zone caveats against home ownership in hurricane problem areas or flood prone areas?

General MOORE. Sir, we—the objective of the program of course is to preserve—this sales assistance program is to preserve a neighborhood, allow those people who can't live with the noise to get out of that neighborhood, and then allow others who can live with the noise to move into the neighborhood, and there are people who don't mind the noise as much as others.

But when we have a home transaction under that program before it is sold to a new owner, that new owner agrees to a perpetual noise easement over that property. So then we foreclose any further action on the new home owner's part for any compensation.

Mr. OBERSTAR. Well, that is an interesting idea, and it is something that would have to be a part of any such program that might be enacted. Are you working on development of this mortgage subsidy assistance program in getting some concepts spelled out on paper?

General MOORE. Yes, sir, we are. We have been working with our local banks; there is a lot of interest there in Nashville. We have been working with Congressman Clement and we hope to be able to put together something of more substance than we have covered today that the committee could get its teeth into.

Mr. OBERSTAR. Thank you.

General MOORE. Yes, sir.

Mr. OBERSTAR. Mr. Garaufis, you suggest that the aviation trust fund be used to provide assistance subsidies, as you put it, for airlines to undertake retrofitting. In five years we anticipate under this bill that has passed the House, we anticipate that trust fund being drawn down to zero or near zero, with just a cushion of margin in there on anticipated demand.

We don't expect to have a surplus in that trust fund, and the current cash flow of the trust fund at that time will probably be just enough to take care of the operation and maintenance, the facilities and equipment account, and the airport improvement accounts of the FAA. Not likely to be a very attractive approach at that point.

Mr. GARAUFIS. We appreciate that, Mr. Chairman. We think that the marketplaces are also going to have to play a part, and the airlines, which in the long term hopefully will become healthier and will benefit from the Stage III airplanes which are more efficient, fuel efficient, in terms of capacity more efficient, that these airlines will build into their fare structures the—a component which will pay for this retrofitting.

Obviously, we know that there are becoming more and more limits on what the Federal Government can do and what the state can do, and what even the city can do. But we also recognize that the money that was put in that trust fund was put in there by passengers for the purpose of I believe safety, I guess is foremost, but that that is passenger money, and whether we do it through the trust fund or we do it through fares, it is still we believe an obligation of the airlines to find a way to make the skies better.

We also understand that there will have to be a phase-in of the Stage III rules. But we don't want to give too much time, because whoever you ask who you put under a burden, they need more time. It is like a lawyer asking for an extension from a judge. I need five weeks, but the judge will say, but can you live with two, or the judge will say, you have got two, and I think perhaps Congress is going to say, you know, they may say they news ten and Congress may have to say, you take five.

And I think that is really, you know, the nub of the difficult job that you have ahead of you, and I certainly don't envy you that difficulty.

Mr. OBERSTAR. We are trying to sort through what are the time frames that might be reasonable to achieve hush kitting, re-enginging or acquisition of new aircraft, and in the early part of our hearings last week I pointed out that the manufacturers are considerably behind in their delivery to the carriers of the Stage III class of aircraft, and there are fiscal limits as to how many aircraft can be built and delivered in the current and foreseeable market for aviation.

So we are just going to have to sort all those through over the next several months, and then we get into the next session, we will start drafting legislation to narrow the focus and see how many people react to it.

Mr. Clark and associates, your suggestion that federal law should require a disclosure statement about noise and its impact on people is a good one. I think that that fits in with other federal policy in housing, and with other practices enacted into law by this commit-

tee with respect to flood—prone areas, as you have suggested in your remarks. We have included such language in other legislation, the Corps of Engineers and the Federal Emergency Management Administration programs, but assuring that the public is well informed about the noise impact is a good idea, as are the concepts of easements for people who would locate in the noise footprint of the airport.

Many, many good suggestions that all of you have offered and we greatly appreciate your testimony. Thank you for being with us.

Mr. OBERSTAR. Our next panel includes a delegation from Maryland, including Congressman McMillen.

Mr. Theodore Sophocleus, Councilman from Anne Arundel County, Maryland. Mr. Robert Stelmaszek, Greater Severna Park Council, Mr. Ken Pippin, Vice President, BWI Neighbors Committee, Mr. Holland, Advisor to the BWI Neighbors Committee, Mr. Dennis Steven, President of the Airport Coordinating Team.

Congressmen, we had two of your colleagues from the State of Maryland testifying earlier, and we are very happy to welcome you, Congressman; grateful to have your testimony, and the always and ever thoughtful way in which you approach issues in this Congress. And I again want to remind witnesses, we are trying to stay as close as possible to the five-minute delivery time in order to accommodate all witnesses remaining.

Please proceed.

TESTIMONY OF HON. THOMAS McMILLEN, A REPRESENTATAIVE IN CONGRESS FROM THE STATE OF MARYLAND; THEODORE J. SOPHOCLEUS, COUNCILMAN, ANNE ARUNDEL COUNTY, MD; ROBERT STELMASZEK, GREATER SEVERANA PARK COUNCIL, AIRPORT COMMITTEE; KEN PIPPIN, VICE PRESIDENT, BWI NEIGHBORS COMMITTEE; THOMAS HOLLAND, ADVISOR TO THE BWI NEIGHBORS COMMITTEE; AND DENNIS STEVENS, PRESIDENT, AIRPORT COORDINATING TEAM

Mr. MCMILLEN. Mr. Chairman, thank you very much. I want to commend you for your leadership for holding these hearings, and it is very timely to talk about airport aircraft noise and our federal responsibility to it. I ask that my statement be included in the record in its entirety.

Mr. OBERSTAR. Without objection, so ordered.

Mr. MCMILLEN. I also must say that one of my constituents, Ken Pippin, is ill today and will not appear. He asked his statement be included in the record.

Mr. OBERSTAR. Without objection.

Mr. MCMILLEN. And last but not least, another one of my constituents, Ernie Michaelson from the Timber Ridge Community Association has a statement as well. I am also pleased to be here with my good friend, Ted Sophocleus, who I said earlier today probably has more expertise from the local level on the issue of airport noise than probably anybody in the country.

So I am particularly pleased that he could stay here, he is in the midst of a very tough campaign in Anne Arundel County, so I am pleased that he would come here to share his thoughts on a very

important issue for our county. Let me just summarize my remarks.

I know that it has been said today, this is a national problem, we need national leadership, obviously, Mr. Chairman, we know that we haven't seen a lot of national leadership in this regard, but when the President released his transportation system plan in March, one big void was airport/aircraft noise. Seven months later we still haven't seen much in the direction of how we are going to cope with this problem on a nationwide basis.

In my view the FAA has been dragging its feet on this issue. As a member of the Transportation Aviation and Materials Subcommittee of the Science Committee, I have continually urged the FAA to at least recognize aircraft noise as a problem, much less a priority.

After many, many requests by our subcommittee, we finally got the FAA to establish a research and development advisory committee on noise abatement so that they start to evaluate this within their ranks as a priority. What I see as the problem, Mr. Chairman, is how we are spending our money at the federal level.

Almost 100 percent of our dollars are going to noise mitigation, and very few going to noise abatement, the source, even though EPA and many experts have said that the real answer to reducing noise is at the source. EPA has estimated that 4 million people live within the LDN 60 contour. They said that if we could switch all of our aircraft to Stage III, which means converting 60 percent of our fleet, then that noise zone would go down to affecting only over 1 million people, maybe one million one hundred people. So really the question is as we have almost spent $1 billion or near $1 billion on soundproofing and all those issues, yet in fact, we see the great, great effect, the great accomplishments that could be achieved by moving towards Stage III.

I think if we do not federally begin in enact the continuation and preservation of statutes at the state level, county level, a patchwork of responses prohibiting Stage III, that is bad for the airlines, bad for the traffic, the consuming public, and I think it is not the solution that we are looking for.

We need a solution that will deal with the problem nationally and will not cripple the airline industry. In that regard, I have been formulating an idea along the lines of an investment tax credit to re—for airlines who re-engine their airplanes to buy Stage III aircraft, and have that tax financed through the airport trust fund. I think this is one way that we can move to deal with the noise at the source, without financially straining our airlines.

On another note, the second major point that I want to make in my testimony, and that, you know, I have a concern on this issue because of BWI, is so often I find that I am getting constituent complaints on this issue. My constituents are asking me to be an expert on flight paths, on all kinds of issues that I do not have the technical prowess to really adjudicate.

People don't know where to turn. They go to the airport, they say FAA. The FAA says go the airport. There is no adjudication process here. I think we need to look at this. I think we need to look at where we can go, sort of an inspector general, so communities can go and be assured that airport managements are following

the most efficient processes and procedures to minimize airport aircraft noise. And possibly the Office of Technology Assessment to give an example might be the kind of place where communities would have resource.

Let me just close on one note. Last week we had a hearing on this matter, Mr. McDaniel, the FAA, I asked him a question, had the FAA ever gone to any airport and evaluated their noise. He said no, the FAA has never been on a single airport to evaluate noise abatement priorities and noise abatement measures. If that doesn't say something about the priority of noise in the FAA, I don't know what does. The bottom line, we need adjudication process.

There are many other things that we can do to focus this issue nationally, including looking at the single even LDN and other things. But the two things I talked about today, incentives, marketplace incentives, to move to Stage III and adjudication processes are the kind of points that I would like to convey to your committee.

I thank you for your time.

[Mr. Pippin's prepared statement appears on page 877.]

[Mr. McMillen's prepared statement follows:]

TESTIMONY BY
THE HONORABLE C. THOMAS McMILLEN
U.S. HOUSE OF REPRESENTATIVES
BEFORE THE SUBCOMMITTEE ON AVIATION

OCTOBER 4, 1990

Mr. Chairman: Thank you for this opportunity to appear before your subcommittee. I would like to commend you on your leadership in holding these hearings on the important issue of federal aviation policy and aircraft noise.

Obviously national leadership in the area of noise abatement has been sorely lacking. When the President released his plan for the nation's transportation systems in March of this year, the segment dealing with aircraft noise was omitted. Now, seven months later, we still have no guidance from the Administration on this rapidly growing nation-wide problem. In fact, it has been just the opposite.

The Federal Aviation Administration (FAA) has been dragging its feet in the area of noise abatement. As a member of the Transportation, Aviation, and Materials Subcommittee, I have had to continually urge the FAA to at least recognize aircraft noise as a problem, much less a priority. Finally, after repeated requests by the subcommittee, a Research and Development Advisory Committee on Noise Abatement was formed.

The real problem, as I see it, is that the federal government is spending all of its money on noise mitigation rather than noise abatement. The EPA estimates that there are currently about 5 million people living within Ldn 60 contours and it is estimated that, after all commercial fleets are converted to Stage 3, this number will be decreased to 1.1 million. This kind of dramatic decrease in noise impact can only be achieve through abating noise at the source. If you consider the nearly billion dollars we have spent on soundproofing alone, it is obvious that this money would be better spent abating noise by phasing-in quieter planes.

Many states have begun to pass regulations pertaining to the phase-in of Stage 3 aircraft, and by doing so, are indirectly affecting other states who have not enacted similar regulations. Airlines respond to these state regulations by redirecting their Stage 2 planes into ports where no limitations have been enacted. This kind of patch-work system is beginning to have an adverse affect on the airline industry. Airlines that are already under financial strain from recently increased fuel costs may well find themselves unable to continue operating under such a system. The answer to this problem is for the federal government to take action to ensure an equitable standard in this phase-in process. One that will assist in the turnover of fleets to Stage 3, but one that will not cripple the airline industry.

In this regard, I have been formulating an idea that should achieve this end. I believe that providing an investment tax credit to airlines who re-engine old Stage 2 planes or purchase new Stage 3 aircraft, financed through the airport trust fund, will

facilitate a rapid phase-in without leaving airlines in financial straits. Utilizing the market system to encourage turn-over of fleets will enable Congress to abate aircraft noise rather than only mitigate it.

The issue of aircraft noise is of great concern to me because of National and Baltimore-Washington International Airports. Being involved in noise abatement efforts in Maryland, I have been privy to numerous constituent complaints about aircraft noise and the manner in which noise is mitigated. People no longer feel that their elected officials are working to help them. Instead, they see us as part of the problem.

People just do not know where to turn for help. As it currently stands they have to take the airport's assurances that noise abatement measures are effective or they can go to the FAA, who's main mission is to fly planes not abate noise. Even I don't understand some of the technology and procedural changes that assist in noise abatement. I think it is unrealistic and unfair to require private citizens to be experts in aircraft technology just so they can get a fair shake from the system.

To address this situation, I believe that we need to reevaluate the current adjudication process for communities that are unhappy with the way aircraft noise is being handled. I believe that there is potential to create some kind of federal oversight for noise abatement measures; a kind of inspector general. Basically, I would like to create a place where communities can go and get an outside evaluation on noise abatement plans to see if they are effective. Possibly the Office of Technology Assessment might have the technical background that would enable them to make such an evaluation. Certainly, it would have to be an agency outside of the FAA.

I am sure that many airports are working hard to address the problem of aircraft noise. But what about the those that are not? What kind of recourse is currently available to the average person? Last week at another hearing on this same issue I asked Mr. McDaniel of the FAA if the FAA had ever gone into any airport, anywhere in the country, to evaluate their noise abatement plans. He told me no. The FAA has never been to a single airport to evaluate noise abatement measures. I am incredulous to this fact. For these reasons I believe we need a new adjudication process.

I have only touched upon these issues but I would now like to turn this discussion over to the community representatives who are here and who have been even more involved than I have in this problem.

Mr. OBERSTAR. Thank you very much, Tom, for those observations and for drawing in to your presentation your experience from your committee perspective.

There is a problem with the FAA role, and that is because the law is inadequate. It does not impose requirements upon the FAA, as we have learned in the course of these hearings. I think that that is an error that we must address for the future, and require some broader role FAA in subjecting its plans at the minimum to the EIS process, and to get them involved in the community input, so that they are required. I think, if given direction, the FAA will most clearly do what the law asks of them, but it doesn't ask of them very much in this respect right now.

Mr. Sophocleus.

Mr. SOPHOCLEUS. Mr. Chairman, I thank you for this opportunity to testify today on the issue of federal aviation noise policy. Aircraft noise has become a major problem to the health and safety of the citizens that live in areas surrounding Washington National and Baltimore-Washington International airports.

The problem in Anne Arundel County which I represent, now affects almost every community. Changes in turning patterns as well as increase in total flights over the past few years certainly points to the need for a mandatory noise abatement program to be implemented immediately.

Identifying the impacted area becomes an arbitrary issue since many aircraft turn too quickly, thereby altering the take-off vector causing a greater impact than is actually represented on the existing noise-zone maps. Couple this with the way the noise zone is calculated based on a 24-hour period of noise occurrences or events in order to establish an area's LDN. Consequently, many homes and families must tolerate excessive noise for six to eight hours a day but are not considered impacted because of the 24-hour averaging. I believe the noise average should be based on peak time occurrences. This would give a more realistic picture of actual impact on the citizens of our county. When an airline projects "Delay Time" for service to its customers, peak time calculations are used. The citizen deserves the same consideration when calculating noise impact.

Flight restrictions between the hours of 11:00 p.m. and 6:00 a.m., are an alternative that must also be implemented, as well as restrictions on the type of aircraft allowed to land or take-off during these hours. An aggressive program of Stage 2 aircraft replacements must be mandated with "Hush Kit" retrofitting to be implemented by all airlines while the Stage 3 aircraft are put in service.

I believe that the size of airport operation must be directly proportioned to the density surrounding the airport facility as well as the physical size of the airport. If, in fact, airports continue to grow to the detriment of the surrounding neighborhood, then the government must be prepared to offer assistance to relieve the detrimental impact to each household and community affected. Air conditioning of schools, buy out programs and strict enforcement of aircraft landings and take-offs are but a few of the solutions. Without your aggressive intervention, our citizens will continue to shoulder the burden thrust upon them by the airlines with no recourse but

to confine themselves to indoor activities, repair cracking walls, and absorb the stress involved in the continued assault of noise.

If I may make another observation, as I sat through the hearings today, we hard from several states. People that are trying to implement programs, buy out programs or noise abrogation easements. Permanent monitoring situations. It occurred to me that there is very little, not only the FAA level, from the federal level of communication, but it seems to me that very few of the states are communicating with each other. Because a lot of these programs have been put into place; laws have been passed by states or by communities, and they are actively working, and they could learn from one another on how to implement these programs. There is no communication going on.

When I hear that Nashville is trying to decide whether to have permanent monitoring or have temporary units, it distresses me, because we have been through that review a long time ago in Maryland, and when you talk about triangulation, and maybe they will be looking at it, this is something that should be tried. When you talk about buyout programs and how it should be—how they should be programmed, we have those working in Maryland today.

So I think a lot of time and trouble could be saved if we talk to one another from state to state, as well as on a federal level. And I didn't get that feeling today. I got the feeling that we have each state running individually, without asking for help or assistance from the other states that have already implemented successful programs.

I think it would save us a lot of time and money if we did that.

Mr. OBERSTAR. That is a very good suggestion.

We will take a brief recess for this vote.

[Brief recess.]

Mr. OBERSTAR. The subcommittee will resume.

I think Mr. Sopohocleus was either at the conclusion of his testimony or had concluded.

Since he is not here in the room right now, we will proceed with Mr. Stelmaszek.

Mr. STELMASZEK. Thank you, sir.

My name is Bob Stelmaszek.

I am going to paraphrase from the written testimony.

Mr. OBERSTAR. Your entire statement will appear in the full record.

Mr. STELMASZEK. Thank you.

I currently live in the Severna Park, Maryland area about 10 miles southeast of Baltimore-Washington International Airport (BWI). I have served in the role of technical adviser to the Greater Severna Park Council, an umbrella organization representing 62 homeowner associations and approximately 35,000 people since 1988.

I am here to share with you some of the frustrations. Some of those frustrations will mirror what you already heard from other communities.

There is not much point in going through all of that again because I think the points were made well.

Additionally, I wanted to suggest some things I am not sure I heard today, I don't think I did, as far as what could possibly be

done in the near term to give us some relief from some of the noise that Severna Park and other communities across the country are having to deal with on a daily basis.

Specifically talking about BWI, the problem is since 1977 the number of commercial air carrier operations has grown from 7,500 to over 159,000 operations in a year. That as last year's measurement, and that has grown some this year as well.

Naturally the growth has been an economic asset to the State of Maryland. The council I represent feels it is appropriate to support these successes associated with the economic advancement, but we recognize that creation of employment opportunities and the overall boost of the state's fiscal and business health is significant and it is necessary.

The council additionally feels, though, there are undesirable outputs from the engine of this prosperity, specifically excessive aircraft noise and pollution.

We feel in some cases this can be managed in a systematic fashion without pitting communities against one another through the "not in my backyard syndrome." As we refer to it, meaning we don't want to move the noise around and make it somebody else's problem.

And in the past four years we have been working towards that end and really haven't had any success whatsoever. The FAA has published a report.

It was rather old, 1986, but it is the most recent I could obtain, that depicts 37 categories of noise abatement and mitigation procedures applicable to varying situations.

The report identifies the strategies ranging from basic elementary to very elaborate strategies that are in use at each airport in the country.

I have given some examples of airports I think are comparable to the BWI situation. The point of doing that is to show you as far as BWI is concerned, there are five noise abatement or noise reduction strategies that were identified.

Of the five, only two of those apply to in-flight aircraft. The bottom line is the two identified are rarely being used.

One is a preferential runway assignment and the other is departure climb-outs. The problem is one of inconsistent application of documented tried and proven noise mitigation procedures. It is allowed to occur, in our opinion, because the "buck don't stop anywhere."

Nobody is really in charge of implementing and overseeing the implementation of the procedures that are currently in existence, let alone what might be developed later.

I think in terms of corrective strategies to identify a few things we possibly could do in the near term, there are several candidates which exist which if applied to the BWI situation would provide immediate relief to the affected communities in the area. It doesn't matter what their location is relative to the designated airport no zone.

What I am referring to is specifically dealing with in-flight aircraft and these strategies include local pattern restrictions. This is a "keep 'em high" policy that the FAA published in, I am not sure what year it was, but it has been five or six years at least.

That policy was developed by the FAA for three reasons.

To protect communities from noise, to increase the efficiency of the operation of the current generation aircraft. In other words, less fuel use.

Finally, and perhaps most importantly, it kept the aircraft transport category aircraft out of the mix of aircraft in the lower altitudes general aviation type aircraft which are basically operationally difficult to make compatible with jet aircraft, which I am sure you are aware.

For those three reasons, we think BWI and perhaps certainly other airports in the nation immediate relief could be gained by taking a look at the air traffic procedures currently in existence and seeing if there isn't some technical way, operational way to modify not the flight path so much but how those flight paths are used.

The biggest one is to keep the airplanes as high as long as possible.

The bottom line point here is that at BWI that is not being done.

Just to give you a quick summary of the points here, I would like to point out that the greater Severna Park area has been unnecessarily and unfairly subjected to the noise and pollution generated as a byproduct of the coming successes of BWI. We think that relief is possible without undue hardship on any segment of the aviation community because there is no need to invent need technology or new technology or new procedures.

We don't think the air carriers need to buy new equipment, although that is in progress at most airports. The stage 3 thing is moving along.

Another thing we think is that voluntary noise abatement efforts are nice gestures. They really are. In the case of BWI, we don't think they have been particularly effective.

The final point I want to make is basically to mirror what Congressman McMillen mentioned earlier, that is that a national local process for identifying, mandating and overseeing compliance with noise abatement regulations is needed. It needs to be free specifically from the FAA.

I think it needs to be an independent or a task associated with an agency that doesn't have the responsibility for flying aircraft, and so forth.

That is really all I have to say, Mr. Chairman.

On behalf of the Severna Park Council, I want to thank you for this opportunity to outline our concerns and share with you some of the thoughts we have about what might help our particular problem.

Thank you.

[The prepared statement of Mr. Stelmaszek appears on p. 882.]

Mr. OBERSTAR. Mr. Holland?

Mr. HOLLAND. Thank you, Mr. Chairman.

I am Thomas Holland, representing the Linthicum-Shipley Improvement Association, one of 11 immediate communities surrounding Baltimore-Washington International Airport (BWI) owned and operated by the State of Maryland.

I also happen to be advisor of for the BWI Neighbors Committee, composed of representatives from each of the 11 communities men-

tioned above. The committee meets frequently at BWI, either at our request or at the request of the Maryland Aviation Administration to ensure continuing and timely discussion of mutual airport and community interests.

Interests include: airport long-range plans, operational changes, noise abatement issues and other airport concerns that might arise.

I would like to recommend something at every major airport that has federal funds involved. I think the community and the airport working together can resolve a lot. For example, in the State of Maryland, we have all learned the hard way what Maryland State laws cover the operation at the airport and the laws of the FAA.

I believe 75 percent of the operation of an airport is strictly by FAA. The other 25 percent is just, you might as well take it, marketing and things of that sort to get the business in there.

Having been involved with aviation for approximately 40 years, my theory to the BWI Committee has always been that if 25 commercial aircraft depart BWI for 25 different destinations and 25 aircraft depart for BWI, the communities and people surrounding each of the those airports are experiencing the same identical airport problems and any solutions must be established at the national level for the benefit of all.

I commend you and your committee for all I have heard as a national noise abatement policy. I think it is needed and will be great.

I would like to recommend that immediate action be taken to establish the year 2000 as a goal for allowing only commercial Stage 3 or aircraft equipped with hush-kits to be permitted to utilize airports that have federal funds involved.

Airports and air transportation are necessary and vital to the transportation needs and economy of this great nation. It is further recommended for those air carriers that might require federal assistance to meet the year 2000 goal, the Federal Airport Trust Fund could be considered for loans.

Mr. Chairman, I wish to commend our Congressman Tom McMillen and the House of Representatives for H.R. Bill 2581, an act to authorize the Federal Aviation Administration to establish an aviation research grant program.

I recommend the intent of this act be utilized for further studies as to need for changes in standards or procedures which govern the rights of state or local governments to restrict aircraft operations to limit noise. This suggestion would be true for the other issues.

Thank you very much.

I have a copy of the federal act of 1958 that established the FAA. It might be in there, but I have never been able to find where they had the responsibility for noise abatement.

I thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

I appreciate that latter observation as well as the others. That is one of the issues that we are going to have to address in fashioning a national noise policy.

Mr. Stevens?

Mr. STEVENS. Good day, Mr. Chairman.

I am Dennis Stevens, President of the Airport Coordinating Team. We were formed in 1987. We are now incorporated in re-

sponse to the planned substantial development of the Baltimore-Washington International Airport.

The State of Maryland does own and operate this airport. These plans to substantially increase the capacity of the airport was stimulated by promise of the then U.S. Secretary of Transportation Elizabeth Dole to provide over $70 million to the State of Maryland for the expansion of the airport to satisfy concerns of Maryland about the turnover of National and Dulles Airports to the Airport Authority, which is dominated by the State of Virginia.

I am not saying our problem started there, but I am saying that was at least a stimulus for the expansion of the airport.

The airport claims that the hub operation of Piedmont at the time had a bearing on this, these expansion plans. The expansion plans are the primary reason why I am here today. I have spoken and have worked with a lot of people over the last four years that have been impacted by the operations of BWI Airport. BWI Airport and Maryland Aviation Administration has developed a noise abatement plan.

It relies heavily on flight changes. Really that is no more than noise relocation. It also relies on a voluntary approach to the switch to Stage 3, which we have had a serious problem with.

Mr. Sophocleus sponsored a resolution in the county council, Anne Arundel County, that passed the State of Maryland to mandate Stage 3 and it passed unanimously in the County Council of Anne Arundel County. Mr. Sophocleus has been very supportive of us. We do appreciate him coming here.

The airport has also been involved in sound attenuations of homes. One public school was sound proofed. However, the State of Maryland chose not to fund the chilling equipment.

As you realize, when you sound proof a school or a house, it then has to be air conditioned in this area. The state chose not to fund the chilling equipment for this school.

Nevertheless, the school, the public school system had to fund that, and we had a problem with that. It also has a resale assurance program which is intended to compensate homeowners for any loss when they sell their house.

We believe these plans of the State of Maryland need to be strengthened and not weakened by an act of Congress by any congressional mandate.

ACT is presently in litigation about the adequacy of the noise abatement plan of BWI and the procedures followed by its adoption.

We succeeded in court not to have our case dismissed. The state wanted our case to be dismissed, and it was not dismissed. For your review I have provided a copy of our goals and objectives.

In 1989, the Linthicum-Shipley Improvement Association, whose members live in a community adjacent to BWI had a survey. The survey included a lot of different items.

One of the items asked the question do you want mandatory noise abatement? The other question was do you want mandatory phase in of Stage 3? Ninety-five percent and 93 percent respectfully of those who responded favored these measures.

Over the last three and a half years, as I say, I have spoken to a lot of people about this.

The planned expansion of the airport, one of the first things that was decided to be done was an expansion of a general aviation runway to accommodate commuter jets. We worked, we convinced the Environmental Protection Agency that, an environmental impact statement should be done on this project.

They suggested to the FAA and the State Aviation Administration that an environmental impact statement should be done, and it was done.

We were very satisfied with the cooperation we have had with EPA. As a matter of fact, I think if we are talking about some agency that can have some oversight and really can provide the public with good information that I would say is non-biased, we find a lot of biased information, biased information from airports and airlines, I think you ought to rejuvenate the EPA Office of Noise, I understand, is not funded.

I think it may be helpful for a neutral party, as a neutral party in this issue to rejuvenate the Noise Office of the EPA. They were very cooperative and they provided a lot of information to us. They do have an individual in Washington who works on a part-time basis.

We feel it needs to be funded. The interaction between ACT and EPA was beneficial. ACT was concerned that the project at BWI not be viewed—that that general aviation project not be viewed as independent, that it not be done piecemeal, that it not be done in a way that you would look at each project individually and not look at the combination of projects and look at the total impact of all the projects.

EPA was concerned about segmenting these projects. This was very valuable.

The EPA also suggested more single-event measurements or more single-event analysis for this environmental impact statement. The FAA did not agree with this.

There was some single-event analysis, but they didn't agree that it needed to be done on the scale that the EPA suggested. I understand last week the FAA suggested that future EIS's on BWI have single analysis.

I think it is good, but if it is just going to be another study that is going to benefit maybe consultants or maybe benefit those not affected by airport noise and not help the neighbors, it is sort of useless. A single-event analysis is good, but it needs to be accompanied by good, solid noise abatement measures.

All communities affected by BWI operations would like to see an increase of Stage 3. One community leader pushed for the hush kit application.

We attempted to get some legislation passed that would require Stage 3 between 10 and 7 at night. This failed miserably in our state legislature. As a matter of fact, we have been more successful in the county council than we have in the state legislature.

The state legislature has funded noise assistance programs, and we are grateful for that. However, we found that there is limited success to be found in a state legislature on noise relief. The state, as I say, has a voluntary program to bring more Stage 3 into the airport. We feel it should be mandatory.

I want to emphasize, I think it has got to be phased in. You probably heard this before.

We can't expect this to happen overnight. Stage 2 has to go. There is too many people that are adversely affected by Stage 2, awakened at night.

I think the hours between 10 and 7 are hours when people are resting. I think that is where you have got to do the emphasis. That is why I say if you are going to try to phase in this stuff, phase in this stuff so it will affect those hours.

Mr. Duffy of the organization NOISE made very substantive suggestions at your committee last week. We support his recommendations.

Work with his group, and his group makes some good, solid suggestions. We believe there should be a distinction between Stage 3 and 3.5.

We believe aircraft are noisy. They may be Stage 3, but they are not all equally quiet. I cited the example of the MD–80 and the 737, 300, that there is a difference in the noise level between these two levels.

The MD–80 tends to be a noisy stage aircraft. We would be opposed to the imposition of a federal review board to have authority over local noise rules.

We feel that the communities have worked too hard to get these noise rules into place. Usually behind every noise rule there is either public pressure, litigation.

In the case of John Wayne Airport there was a lot of money spent trying to get noise abatement and limiting the growth of that airport. For the Federal Government to come along and just void all this is a travesty.

I definitely think the Federal Government needs to stay out of this business of overturning any local noise rules. We have all got to live by limitations. The airport makes the noise.

The airports control the operation of the airports. Who comes into the airport? This is their responsibility.

And, of course, the FAA is concerned about safety and the FAA is concerned about flight paths. Fine, but as far as the local rule is concerned, the local rule was there for a particular reason.

Too much effort has gone into these things for any agency of the government to come along and void these rules. Give and take involved in the controversies of an airport proprietary versus the community has many twists and turns and is more understandable from a local perspective.

Each airport has its own problems. There are airports in the country where I don't think there are a lot of noise complaints.

I don't think there are a lot of noise complaints. It may be situated in an area—I think they are trying to build an airport outside of Denver where it is far enough away from populated areas so it may not be a problem.

Some airports are very much of a problem. A lot of the airports in California are real problems. It would be unfair to both parties to interpose a third party in the adoption, with the Federal Review Board with the authority to undo a carefully constructed noise rule.

Not only could the rule itself be challenged, but the authority allowing this rule, thus unduly burdening a community because of a delay or voidance of a rule. ACT has been in state court wise.

We have succeeded in not having our cases dismissed. The state court decided not to dismiss our case against the State of Maryland and it decided that the noise abatement plan is considered to be regulation.

The state did not consider that before. So we are on track. We are trying to protect the citizens.

We realize that this problem of airport, of airport noise is a sensitive issue among airlines. We realize that. It is also a sensitive issue among the people who have to live and be irritated by these airports. Somehow we all must exist. We must live within our means.

The airport must not be allowed to destroy communities, air carriers must recognize their duties to reduce air and noise pollution, not just expand to increase costs. The Commission of Air Transportation must not overwhelm the environmental considerations to diminish the quality of life.

The do it now or build it attitude must be tempered by consideration to what it will mean to those adversely affected.

The no-build option must be a realistic option. We have got to live within our means.

I think the Congress and this country has got to come to grips with this. We can't continue to spend what we don't have. The beauty of the woodlands, the tranquillity of the fields must be preserved. As Thomas Jefferson said, life, liberty, and the pursuit of happiness, it must not be taken away. We must, should learn not to destroy ourselves, destroy our communities in order to what we may construe as saving them. The government must complement, not compromise control.

I want to conclude with a remark that, isn't it really true that the movement of people and freight is not limited to the air industry? We shouldn't compartmentalize this issue that the air industry is holier than thou and that is is sacred and the only way to move people. It happens to be a very inefficient way of moving people. Rail trucks, buses and ships accomplish this slower but more efficiently.

Included in my prepared statement is a chart in here that comes from the U.S. Department of Energy. It indicates that for all the criticism that automobiles get, and I am the first one to criticize the use of automobiles, that air traffic, the domestic carrier on a Btu per passenger mile basis exceeds the automobile by over 23 percent. It exceeds bus transportation, transit by 26 percent, and it exceeds the Btu per mile, per passenger mile on inner-city buses by 406 percent. And rail traffic, it exceeds inner-city rail traffic by 87 percent.

So it is not the most efficient thing that we really should look into in terms of providing too much assistance to. It should be noted, however, that Stage 3, I understand, are more efficient. Then I heard from an air transport association representative that aircraft that used hushkit treatments are less efficient, less fuel efficient than those that don't.

So I think we should look at this as an issue of—we can look at this as an issue of energy.

In summary, I am saying that we should, there should be incentives to encourage more Stage 3. I can't define incentives. You know, you say the trust fund is going to disappear or will almost disappear. It is going to be drawn out in a few years. Where are you going to get the money? We just don't have the money any more.

You know, maybe the marketplace. You know, maybe that is the best way to look at this thing. Let the marketplace try to adjust to this. I am saying Stage 2 has got to go. Someway it has got to go.

Federal review board should not be granted the authority to avoid any local notice of rules. John Wayne was emphatic about this. They have got a contractual thing here. They probably have to sue if the Federal Government decided that it wanted to establish a board. There would be another long, drawn out lawsuit.

Stage 3.5 should be defined. Non-additional is good. A quiet environment stimulates thinking, helps to develop ideas, helps a person to develop ideas and enriches our lives. Domestic tranquillity is essential for a society. It has got to be preserved.

Noise is certainly a problem in our country. I know it is an issue that is difficult to grapple with.

Thank you for your time.

[The prepared statement of Mr. Stevens appears on p. 887.]

Mr. OBERSTAR. Thank you for your thoughts. You have obviously given this a great deal of consideration and have had a considerable impact yourself by the effects of noise. We greatly appreciate your thoughts on the subject and your insistence on moving from Stage 2 to Stage 3.

I think that clearly is the objective of the industry, the airline industry. That is the carriers and the manufacturers. Along with that, they would ask for some certainty that having made the investment to achieve that goal, that they would be able to amortize that investment over a period of time and not be asked midstream to again make huge dollar amounts.

So the level of technology which must be a part of any future noise policy, the level of technology to be achieved by the air carriers is one that we must think through very carefully in a time frame within which to achieve that. Then make sure that we stick to it and that local authorities not then up the ante so that we come to some new level of cost and instability.

I would like to just ask, you said that MD–80 is a noisy Stage 3 aircraft. Can you tell the difference between a 757 and a 320 and MD–80?

Mr. STEVENS. Yes, by a part 36.

Mr. OBERSTAR. No. I mean sitting out there in your backyard listening to aircraft moving through their flight patterns.

Mr. STEVENS. I have watched airplanes. I did watch an MD–80 and I wondered if it was an MD–80. I wondered if it was a Stage 3. I thought it was kind of noisy. There did seem to be a definite difference between the 737 and an MD–80 by my perception.

I did look at the MD–80. It looks somewhat like the DC–9. It is a modification of the DC–9. I thought to myself is that really an MD–

80? Yes, I understood that it was, at least according to the schedule of that airline. So it did seem, didn't seem to be as quiet.

According to the information that we get from the certification data, the noisiest—maybe this isn't the best comparison. The noisiest MD–80 is about 92 EPN dB and the quietest 737 is 82.8. I know I am looking at the extremes, but these are two Stage 3 aircraft. One is 92. The other one is 82.

Mr. OBERSTAR. Mr. Stelmaszek, do you know—or Mr. Holland, do you know what percent of aircraft using BWI are Stage 3?

Mr. HOLLAND. Mr. Chairman, I wouldn't want to mislead you. They did give us the figure. I think it is around 35 percent or 38 percent.

Mr. OBERSTAR. Thirty-eight percent. So you are not enjoying any major reduction in noise? Some reduction in noise, better than it was, not as good as it should be?

Mr. HOLLAND. I would say it is as good as you can possibly make it today with the equipment you have.

If the Chairman would allow me, I would love to mention something about noise. I attended a hearing approximately a year and a half ago. I had three editions of a local newspaper three separate weeks. The first edition stated people in Linthicum complained they cannot enjoy their patio on account of the Beltway noise. The next edition I read next week was that the people in Glen Murray Park right outside the airport couldn't enjoy their swimming pool on account of the aircraft noise.

I checked with those people. I think they lived there a year and a half. The airport celebrated its 40th anniversary in June.

Then a third week here comes the newspaper again. This is all on the front page. It stated there that people not too far from BWI were complaining about the motorboats racing on the water because they didn't have mufflers.

Noise can annoy anybody. To me, even a fly.

Mr. OBERSTAR. I appreciate that very much.

Which level of government is the zoning authority in the area where BWI is located?

Mr. HOLLAND. BWI zoning comes—you have your National Noise Act. The state of Maryland runs the airport. The state of Maryland has legislation that gives them guidance on how to set up the noise zone. Your Anne Arundel County planning and zoning are the ones that set up the zones for homes, commercial and——

Mr. OBERSTAR. The really effective level of government for determining where businesses, industry and people can locate within the area of the airport is the county government?

Mr. HOLLAND. Absolutely.

Mr. OBERSTAR. Have they been tough on their zoning? Have they really attempted to keep people out of the noise footprint of that airport?

Mr. HOLLAND. Well, I tell you, Mr. Chairman, right down the street from us they just opened up the commuter runway. It is slightly in the noise zone, I would say less than a mile, they are putting up 100-something new zones, 80 in one location and 30-something in another. People are buying them as fast as they are constructed.

Mr. OBERSTAR. Are they aware they are building right near an airport, that they are building under the flight path of aircraft and they are going to be affected by noise?

Mr. HOLLAND. Mr. Chairman, they have to be, because I don't know how they can miss it. They can see the airport from where the homes are being built. Anywhere you go in that airport within a mile to ten mile radius, you see nothing but signs that tell you how to get to BWI airport.

In other words, what I am trying to say, there should be no reason for anyone not knowing that the airport is there. Congressman Tom McMillan last year, he tried to pass a bill, I talked to him, where the real estate agents in Maryland would be required to put that in their contract within a five-mile radius around the airport. The real estate people in Anne Arundel County fought this and he never got it through. He tried, though.

Mr. OBERSTAR. That was a suggestion made by other witnesses, that the noise aspect of homes be very prominently portrayed to home buyers and that they be made well aware of what they are getting into. I think that that is fair.

I greatly appreciate your testimony. All three of you have been very splendid witnesses. Thank you for being with us.

Mr. OBERSTAR. I would like to combine the next two groups. Joanne Young, General Counsel for Coalition for Aircraft Modernization; Steve Bassett for the Aircraft Owners and Pilots Association; and Mr. Stephen Cramer, Vice-Chairman of the Environmental Steering Committee for the National League of Cities, speaking also on behalf of the Metropolitan Area Sound Abatement Council in the Twin Cities.

There may be a little comfort in numbers at this stage of our hearing. We will take you all together at the same time.

Thank you for being with us. Ms. Young, would you begin?

TESTIMONY OF JOANNE W. YOUNG, GENERAL COUNSEL, COALITION FOR AIRCRAFT MODERNIZATION; STEPHEN R. BASSETT, SENIOR VICE PRESIDENT, GOVERNMENT AND TECHNICAL AFFAIRS, AIRCRAFT OWNERS AND PILOTS ASSOCIATION; AND STEPHEN J. CRAMER, VICE-CHAIRMAN, ENVIRONMENTAL STEERING COMMITTEE, NATIONAL LEAGUE OF CITIES, ALSO ON BEHALF OF METROPOLITAN AREA SOUND ABATEMENT COUNCIL, MINNEAPOLIS, MN

Ms. YOUNG. Good afternoon. With me, Mr. Chairman, is David Short, my colleague who also has been very active in representing the Coalition.

The Coalition for Aircraft Modernization appreciates this opportunity to present its views on the appropriate content for a national aircraft noise policy. By way of introduction, the Coalition is a broad-based aviation industry organization seeking the development of an economically balanced aircraft noise policy through public education, regulatory and legislative action, including coordination on the international level.

Its membership is open to all types of entities which support these objectives and includes individuals and many companies supporting the aviation industry such as aircraft lessors as well as fi-

nancial services companies. Indeed, the companies which today are largely owned and financed aircraft operated by the industry.

It seeks to effectuate a series of public policy objectives, including development of aviation policies which take due account of the interests of the traveling public, alleviating constraints on aviation infrastructure capacity, responding to legitimate environmental concerns, and ensuring that civil aviation continues to be capable of playing its traditional role in supplementing military resources in times of national defense emergencies.

Being a broad-based industry coalition, the group represents a much more diverse range of interest and concerns than individual entities or trade associations speaking for specific segments of the industry.

The Coalition was formed to ensure all affected interests receive equitable treatment as aircraft are replaced by newer, quieter equipment. In a sense it was formed to enable the silent majority of American travelers and businesses involved in the aviation industry who are keenly interested in this subject and in the outcome of this debate but who to date don't seem to have a voice.

The Coalition welcomes the interest this committee is taking in modernization of the commercial fleet to reduce aircraft noise. While it is not opposed to the gradual phasing-in of rational noise measures, it is categorically opposed to the imposition of any restrictions which fail to take account of the economic realities associated with implementing across-the-board restrictions.

Moreover, it is strongly of the view that the issues of aircraft noise and airport capacity are closely inextricably linked, and any policy intended to deal effectively with aircraft noise must take due account of the implications on airport capacity.

We submit that policy options must be evaluated with due consideration to their impact on the traveling public, that is whether regulatory requirements on fleet growth due to a non-addition rule, and regulatory requirements for premature retirement of aircraft with economic useful life remaining, will constrain capacity so severely as to prevent the industry from meeting the transportation needs of the public, driving up prices, forcing the financially weaker carriers out of the market, and stifling potential new competition.

In addition, the financial impact of the policy options must be carefully considered, given the staggering amounts of capital which will be required to fund the transition to an all-Stage 3 fleet, and the obvious repercussions for the industry and the public which it serves.

In this connection, we believe it is vital that current Stage 2 aircraft owners continue to have access to a second-hand market in which to dispose of these assets at a fair price and thereby generate at least some of the capital necessary to acquire new Stage 3 equipment.

The Coalition is concerned that any policy options adopted to address the issue of fleet modernization take into consideration the present state of development of hushkit technology, as well as its availability on a large-scale and economically viable basis, and the capacity of aircraft manufacturers to supply sufficient quantities of Stage 3-compliant aircraft to meet increased demand resulting

from the imposition of restrictions, as well as the natural growth which has been forecast for the industry.

The Coalition proposal for a national noise policy. While the Coalition is generally supportive of the eventual need for a national noise policy, given the current situation in the Persian Gulf, we question whether the timing is the best to proceed with consideration of this matter. Fuel prices have risen dramatically over the past two months, causing a severe adverse impact on the profitability of the industry, especially for the financially weaker carriers, many of which face the greatest burdens in transitioning to an all-Stage 3 fleet.

Recent events in the Persian Gulf have also highlighted the importance of maintaining and increasing the capability of the Military Airlift Command to meet the logistical support requirements of the national defense. In this regard, a considerable proportion of the U.S. civil air cargo fleet, which could be made available to the military in times of national emergency, is Stage 2 equipment.

Before mandating that these aircraft be taken out of service prior to the end of their economic useful life, we submit due consideration be given to the impact such action would have on our nation's defense preparedness.

The Coalition has endorsed a specific proposal to achieve the transition to an all-Stage 3 fleet in an economically feasible manner. In brief, the Coalition objects to the promulgation of any "non-addition" rule, but submits that if one is nevertheless enacted, it should be similar to and no more restrictive than those adopted by the EEC and ECAC, and should be preceded by a reasonable period of prior notification to aircraft owners and the public.

The predicate for the Coalition proposal for the transition to an all-Stage 3 fleet is that any operating ban on Stage 2 aircraft be linked to the ability of owners and operators to comply. It is indisputable that the "major" carriers, which own or operate approximately 70 percent of the U.S. Stage 2 fleet, are better situated economically to convert to all-Stage 3 equipment than are the "national" carriers.

Mr. OBERSTAR. I will have to interrupt at this point. We have five minutes remaining on a recorded vote on the House Floor. We will resume in roughly 10 minutes.

[Vote recess.]

Mr. OBERSTAR. We will resume our hearing and attempt to conclude at a reasonable hour.

Ms. Young was in the middle of her statement. I welcome your continuation.

Ms. YOUNG. Thank you, Mr. Chairman.

While the majors have always to a large extent relied upon new aircraft, the "nationals" and smaller carriers have traditionally relied on older aircraft purchased from the larger carriers through the used aircraft market in order to develop and expand their fleets. Accordingly, the Coalition would support a three-part, phased transition to Stage 3 compliance with the "major" carriers achieving compliance in three equal increments by December 31, 1999, 2004, and 2009; "national" carriers in two equal increments

by December 31, 2004 and 2009; and all other carriers by December 31, 2009.

Because Stage 2 aircraft comprise a substantial percentage of the Civil Reserve Air Fleet (CRAF), the Coalition endorses an exemption from any operation ban for suitable cargo and cargo-convertible aircraft dedicated to the CRAF program, in order to prevent a critical shortage in emergency airlift for national defense purposes.

While the Coalition is proposing specific phase-out dates in an effort to make its comments as useful as possible, this proposal assumes hushkit and re-engining technology will be certificated and available on a reasonable economic basis.

The Coalition believes it imperative that no definite phase-out timetable be adopted until retrofit technology, hushkit technology, has been developed and is in fact commercially available.

I might digress a minute, Mr. Chairman, to say that I represented Miami International Airport at the time that the transition from Stage 1 to Stage 2 aircraft compliance was being made. And I recall the Senate staying up until 4:00 in the morning basically to pass relief for Miami International Airport so that the whole of Latin American could continue to fly into that airport.

Literally, the U.S. noise regulations would have banned their equipment because at that time, the hushkit technology just wasn't commercially available. So even if they wanted to come to compliance, they weren't able to.

The Coalition proposal is based on the belief that rigid, heavy-handed regulation is not the appropriate answer to the noise issue. Instead, a flexible approach should be pursued which takes account of the financial, technological, and practical constraints. Unduly rigid regulation will lead to reduced service options, reduced competition, and higher fares, which is not, we submit, what the vast majority of Americans want.

A more flexible and rational noise policy, such as that proposed by the Coalition, will avoid these pitfalls while achieving increased responsiveness to environmental concerns.

A significant consequence of the aircraft noise problem has been stagnation in airport capacity. No major new airports have been built in the U.S. since Dallas/Fort Worth opened in the mid-1970s. Only one new airport, Denver, is underway today, and few others are even on the drawing boards.

In the wake of deregulation, however, U.S. airline traffic has grown from 275 million passengers in 1978 to 487 million in 1989, and with forecasts for further growth, to 900 million passengers by the year 2000. Based on this growth estimate, it is forecast 65 major U.S. airports will exceed their rated capacity by the turn of the century.

This capacity stagnation has been brought about largely due to objections by a small but vocal minority to the construction of new airports, expansion of existing ones, and alleviation of nighttime curfews because of concerns over aircraft noise.

Many of these critics moved to neighborhoods surrounding airports long after the airports had been built, knowing full well the noise impact they would be exposed to. The Coalition believes it is imperative due account be given to the needs of the vast "silent

majority" who require frequent, low-cost air service and its attendant economic benefits for the communities in which they live.

In brief, we submit it is wrong, as a matter of policy, to allow the complaints of the few to strangle the capacity needs of the larger community.

Accordingly, it is vital that Federal action to deal with the aircraft noise issue also take account of the need to increase system capacity to accommodate the massive growth which has taken place over the past decade and is forecast to continue into the future.

The Coalition strongly believes the feasibility of any program aimed at phasing out Stage 2 operations is dependent upon the Federal Government's preemption of the field of noise regulation.

The present system, which allows for the imposition of local controls more stringent than Federal standards, has resulted in a virtual "patchwork quilt" of noise restrictions, making the ability of a carrier to fly given aircraft into each airport on its system a hit-or-miss proposition.

The Coalition does favor allowing local airport operators which desire to accept a higher amount of aircraft noise in order to encourage economic development, attract increased air service, or for other reasons, to do so. If, given local conditions, it is not necessary to mandate total elimination of Stage 2 aircraft, then no valid purpose is served by slavishly requiring such communities to forego the countervailing economic advantages.

It is clear that behind the efforts of local governments to further restrict aircraft noise is the threat of legal action by local interests, due to airport operators' liability for damages for noise. The Coalition submits that in exchange for the Federal Government preempting local noise restrictions, Congress should grant immunity to local airport operators from noise-based lawsuits.

In conclusion, Coalition for Aircraft Modernization believes that a rational policy for fleet modernization is dependent upon a recognition of the harsh economic realities facing the airline industry. While not opposed to a gradual phase-out of Stage 2 aircraft from the United States fleet, the Coalition believes the timetable for the phase-out must be linked to the owner/operator's ability to comply with the new standards.

The economic burden of the transition to Stage 3 will be staggering. Before owners and operators are asked to shoulder this burden, they should be assured the transition will take place according to an economically realistic schedule; and they will be accorded the ability to recoup their investment.

Specifically, the phase-out timetable should take account of prevailing financial and technological constraints, including the need of current Stage 2 owners to have a viable second-hand market in which to dispose of those assets without undue financial loss.

There should be Federal preemption of inconsistent local noise regulations, and assurance should be granted that aircraft currently in existence will not be forced into premature retirement to comply with noise standards in the future more severe than Stage 3.

The Coalition appreciates this opportunity to offer its views and trusts its comments will be helpful to the committee.

[The prepared statement of Joanne W. Young appears on p. 894.]

Mr. OBERSTAR. Thank you, very much, Ms. Young, for being so specific and precise about the recommendations from your Coalition for noise policy. I will come back to those in a moment.

Mr. Bassett, on behalf of AOPA.

Mr. BASSETT. Thank you, Mr. Chairman.

The issue of noise is one that greatly affects the general aviation community, as well as it does the airline community. You have our testimony. With your permission, I will be brief and quickly summarize.

Mr. OBERSTAR. Please proceed. Your statement will appear in full in the record.

Mr. BASSETT. We represent 300,000 general aviation pilots in the United States, approximately 60 percent of whom own and operate the fleet of general aviation aircraft in this country.

We have been engaged for many years, indeed annually, in hundreds of airport issues around the United States. Predominantly, the issue of noise is one that impacts us, not only at the major urban airports in the United States, but to a great extent at many of the smaller public use airports around the country.

Of course, the airlines fly into somewhere in the neighborhood of 400 airports in the United States, generally accessing approximately 15,000 flights, more than half of which are for public use purposes.

And in many of those airports, we simply find that because of the local proprietor's ability to establish reasonable noise limits, that whether the noise is real or perceived in the local community, as was mentioned earlier, we find a patchwork of restrictions, of regulations.

We find curfews being in place that restrict the ability of general aviation aircraft to conduct interstate commerce in the United States. And that, indeed, is a restriction on not only passenger traffic and, of course, general aviation cargo's approximately 25 percent of all of the intercity air passengers in the United States, but, of course, the restriction on air cargo, bank check delivery, and many of the other activities often, of course, which occur at night.

Legally, we have over the years engaged in airport battles, Westchester as an example, over a curfew, Republic Airport in New York.

We are currently involved in the Long Beach issue, and there is currently an issue in Aspen, Colorado where there is a curfew on nighttime operations which in our view is not only illegally imposed by the local airport proprietor, but is also discriminatory because it has one set of operating restrictions for air carriers and another set for general aviation.

This is not unusual. That patchwork of regulations nationwide has created a kind of environment that not only in the urban areas do we have a community/political issue to deal with, but often at the smaller airports around the country that 10 to 15 years ago were not encumbered by residential development, today find themselves encumbered by residential development.

And a problem that could not even be foreseen 10 or 15 years ago relative to noise is indeed a problem today. We are very supportive and have been for years to the development of a broad-based na-

tional noise policy. We believe it's one that should be developed in cooperation with local, Federal and state authorities.

But ultimately, we believe that a national noise policy should have these three elements. First, that there should be uniform Federal standards which are clear and unambiguous against which local noise initiatives can be measured and evaluated, and that indeed there be a mandatory review by the Federal Aviation Administration of all proposed noise restrictions or regulations at airports around the United States.

Number two, that the FAA must be empowered to block implementation of local restrictions, which conflict with those Federal standards.

And three, that there be a requirement for the local development and enforcement of meaningful land use compatibility policies to protect against residential encroachment.

Only in this way does AOPA feel that we will be able to protect our infrastructure in the future, be able to build the kind of an airport infrastructure we need in the future, and ensure that air commerce, especially through the use of general aviation aircraft, can continue to be conducted.

We congratulate you for holding those hearings. We thank you for this opportunity to testify and will be happy to answer any questions when the time comes.

[The prepared statement of Stephen R. Bassett appears on p. 769.]

Mr. OBERSTAR. Thank you very much. It's also to the point, specific. I come to rely upon AOPA always to be well informed and clear on its objectives.

Our final witness, Mr. Stephen Cramer, please proceed.

Mr. CRAMER. Mr. Chairman, thank you.

I am a member of the City Council in Minneapolis, and I bid you welcome from your state, your home state.

I am also Vice-Chairman of the Energy Environment-Natural Resources Steering Committee of the National League of Cities. The NLC membership includes both local government airport proprietors, as well as nonproprietor governments whose residents may experience unacceptable levels of aircraft noise.

I am also here to day reflecting the position of the Metropolitan Aviation Sound Abatement Council, MASAC, a voluntary association of local governmental civic and aviation industry officials, who make recommendations about noise abatement options around MSP Airport in the Twin Cities area, and I believe comments have been submitted for the record on behalf of MASAC.

Mr. Chairman, let me first join with the other witnesses on this panel in expressing the National League of Cities appreciation for your efforts and your subcommittee's efforts in passing H.R. 5170, regarding a passenger facility charge.

And it's our hope that your colleagues in the Senate can proceed in a like fashion so that that can move forward, we hope without the aviation noise component of Senator Ford's initiative.

The National League of Cities municipal policy considers aircraft noise as one of many forms of pollution affecting urban and suburban areas.

Air, water and noise pollution must be solved primarily by actions of the polluting entity, in this case the scheduled airlines with, of course, assistance and support of all levels of government.

So from that premise, I come to different conclusions about solutions than the others who have made comments on this panel. I would like to highlight four specific recommedations, but first I would like to touch on two principles which underlie those recommendations. And those principles relate to federalism, attempting to sort out the relative rights and responsibilities of differing levels of government to assure noise reduction.

The first principle is that the Federal Government policy must acknowledge the right of local airport sponsors to adopt tougher noise protections than federal minimum requirements when needed.

The National League of Cities believes that although the Federal Government can and should adopt national minimum noise standards that airline aircraft must meet, local governments and airport operators must have the authority to impose more stringent, more additional requirements on aircraft operations to achieve immediate relief from unacceptable aircraft noise exposure.

We certainly heard today the patchwork quilt argument that inhibits the capacity of the national aviation system, but I would make two points in response. First, local aircraft noise restrictions can be already successfully challenged in Federal court by the FAA if those restrictions burden interstate commerce, if they interfere with FAA's own authority for aviation safety and air space utilization, or if such local proposals or policies discriminate between classes of airport users.

Now, we must assume that FAA has been applying its law and that those local noise restrictions across the country that compose the patchwork quilt, that FAA hasn't challenged in court in fact don't violate those existing legal tests.

Second, the continued ability of local airport sponsors to impose site-specific use restrictions on aircraft operations in our judgment is the best way for the Nation to achieve more airport capacity.

Unless an airport sponsor can assure neighboring communities that it can and will control the noise around its runways, those communities will resist efforts to increase or even maintain the airport's current capacity.

So we would urge Congress not to enable FAA administratively to overrule site-specific noise protections. Second principle, the Federal Government should recognize the rights of local governments under state law to control zoning and land uses around airports.

Now, Mr. Chairman, the NLC recognizes that when the Federal Government and an airport sponsor have assured that the quietest possible fleet is serving an airport and that aircraft are being operated along flight tracks that best minimize noise, that state and local governments that control land uses near the airport must

take actions to help assure the continued compatibility of that land with airport operations. And this is especially true, Mr. Chairman, if we are entering, as I hope we are, a time of new airport construction, per the Denver example.

And as I will discuss in a moment, the National League of Cities is working with FAA to develop guidelines to all parties on those issues. But Mr. Chairman, land use compatibility cannot be achieved by zoning where the airport is already surrounded by high density residential development which existed long before the jet age arrived.

Under these circumstances, which characterizes many noise impacted airports around the country, to identify residential land use as the problem is a blame-the-victim strategy which I think is neither fair or at least in my mind convincing.

Let me touch on the recommendations quickly, Mr. Chairman. First, the Federal Government should set a schedule for industry phase-out of the noisy Stage 2 aircraft. FAA should establish under its existing statutory authority a phase-out schedule with in-term deadlines for domestic airlines to retire their existing fleet Stage 2 aircraft.

You have heard that many times over the course of your hearings, and we would urge the FAA to proceed immediately to publish a noticed proposed rulemaking proposing a definite schedule for the transition to an all Stage 3 fleet by the end of 1999. And through the rulemaking process, the carriers and others can offer arguments for why that data may not be feasible. And based on that input, the FAA can make a final determination.

This would be the single most important step FAA could take to convince skeptics that the Federal Government was in fact acting to improve the environment around airports.

Second recommendation, the Federal Government should deny entry into the U.S. service of Europe's discarded fleet Stage 2 aircraft. The airlines nonaddition proposal would in fact allow them to purchase older Stage 2 aircraft from Europe where their future use is restricted and to import them for operation here for a half decade without being updated to Stage 3 noise standards.

Why should the FAA, by its inaction, allow aircraft noise to get worse at major U.S. airports for years to come? Keeping out additional noisy jets from foreign sources is an appropriate environmental task for the Federal Government.

The third recommendation, the Federal Government should provide trust fund grants to local communities to participate in their airport sponsors part 150 compatibility noise programs.

Under current law, under the airport sponsor of a part 150 noise compatibility funding project may recover its cost for that process through the FAA's Airport Improvement Program. Other local governments whose jurisdictions are impacted by airport operations must participate in the part 150 process with their own funds. Congress should consider allowing noise affecting communities near airports to also be eligible for Federal airport planning funds.

Surrounding communities would benefit from the technical expertise that Federal funding would enable them to gain. Finally, FAA should publish guidance and materials to assist city and airport planners on land use compatibility options. The NLC has pro-

posed and the FAA has agreed to cosponsor a seminar later on this year on airport land use compatibility planning, and we are appreciative of the FAA's cooperation in this project, which is also supported by the N.O.I.S.E. organization of which I am president.

This two-day seminar will allow city and airport planners and consultants the opportunity to discuss what planned use planning techniques have worked and have not worked to mitigate aircraft noise problems.

Attendees will hear both about past efforts to keep land around airports compatible with aircraft operations, and the tougher task about efforts to improve the situation where airports around urban airports have already been developed for other residential or non-compatible uses.

We hope that a cooperative two-day seminar of this sort will provide opportunities for education and that the findings might be published and widely disseminated so that others can benefit from the experiences around the country.

In conclusion, Mr. Chairman, the NLC urges Congress and the Administration to develop a national aviation noise policy that is consistent with the principles of Federal limits and which, when implemented, will rapidly improve the noise environment around U.S. airports.

In our view, the burden, which is as of yet unmet, is on the airline to demonstrate that their desire for unfettered flexibility in scheduling limited numbers of quieter Stage 3 aircraft in the U.S. airports is a value superior to the continuing efforts of communities to protect their citizens from excessive noise through regulations.

We are fearful of any federal administrative preemption process that could lessen the ability of airport sponsoring governments to negotiate specific solutions to noise problems with their neighboring municipals.

Thank you, Mr. Chairman.

[The prepared statement of Stephen J. Cramer appears on p. 797.]

Mr. OBERSTAR. Thank you for being very, again, very precise and specific about your recommendations.

This panel has done very well in that respect. You have made very, very good suggestions, Mr. Cramer, although I must say that it's nice to ask that the Federal Government accept financial liability for payment of damages resulting form aircraft noise. Maybe that is the place where that responsibility and that liability should lie, but it will, in my judgment, be the surest way to kill any bill on aircraft, establishing a national noise policy for airports and aircraft, because I don't think this Administration is in any mood to accept anything that expands Federal responsibility.

It's an issue, liability, that must be dealt with. I am not—let me put it this way: I am persuaded that right now this is not the way to go about it, and we may find other ways to deal with that.

Given some of the other problems I have had with the White House and the OMB on other aspects of aviation, I wouldn't want to kill a good program over something like this. So let's see if we can deal with it differently.

Do you have a list, Ms. Young, of the organizations that are members of your coalition?

Ms. YOUNG. I can tell you who is on the board.

Mr. OBERSTAR. I don't need you to tell me that. If you would just submit that to me I would appreciate having that so we know who are participating in your group. You seem to have gathered together the carriers, at a minimum and perhaps many other manufacturers; and that is good to have a single locus for a voice for that perspective. And it's very important.

The issues that you have raised, I think, are very pertinent to the purposes of developing a national policy. You have addressed the technology questions. Although I must say that reviewing the points you raised on Page 6 about retrofit technology is implying that it's neither developed or commercially available.

We heard other testimony from previous witnesses about the technology, its costs, the rate at which it can be put into effect, and that it does differ from the implication at least of your testimony.

I do think that the phasing in and the cost impact is very important. We certainly need to know before any such requirement would be imposed what would be the costs and the impacts on different sectors.

You suggest that there ought to be a linkage between phase-out of Stage 2 and the owner-operator's ability to comply. We would have to know who is going to make that decision, what are going to be the factors that go into such a decision, and you do point out that the economic burden will be staggering.

We have heard testimony already that the cost of bringing that 40 percent of the fleet that is Stage 3 to its current level has already been $175 billion. Not many people realize how big that investment is and how significant the industry effort has been. So we appreciate all those various points.

And the general aviation impact, Mr. Bassett, I know that Minnesota, for example, has been very diligent in developing reliever airports and general aviation airport networks so that there would not be added to the noise budget of the Twin City Airport this additional increment. And now we have had some troubles with the FAA ruling in the air traffic control area of Twin Cities, so we have had to be involved—I personally had to get involved in trying to resolve that matter.

We are now winding down to the last three minutes on a recorded vote on the House Floor. And rather than belabor this panel to remain longer, I will offer my very deep appreciation, gratitude for your very thoughtful, well expressed comments that have been very helpful for the purposes of this hearing.

We will proceed further in the pursuit of the national noise policy. I hope that we can come to an accommodation should the Senate ever pass a bill on the continuation of the aviation programs that we can come to an agreement with them should they include a noise component and bring about an amicable resolution of that issue.

It's not one that I think can be done in the context of this legislation, but it's one that we really ought to have the Department put their nose to the grindstone and make some recommendations to the Congress and to the aviation community.

The subcommittee stands adjourned.

[Whereupon, at 5:47 p.m., the subcommittee adjourned.]

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Statement of Stephen R. Bassett

Senior Vice President
Government & Technical Affairs

Before the

House Committee on Public Works & Transportation

Subcommittee on Aviation

Honorable James L. Oberstar, Chairman

Concerning Aircraft Noise

October 4, 1990

Good afternoon, Mr. Chairman. My name is Stephen R. Bassett, and I am Senior Vice President for Government and Technical Affairs for the Aircraft Owners and Pilots Association.

AOPA represents the interests of 300,000 individual members who own and fly general aviation aircraft to fulfill their personal and business transportation needs. That is 60% of the active pilots in the United States. AOPA members own or lease 62% of the aircraft in the general aviation fleet.

We appreciate the opportunity to express our perspective on the complex issue of aircraft noise. Because of their light weight and relatively low power output, nearly all of the aircraft operated by our members generate noise levels well below the parameters of the most quiet Stage 3 aircraft. Many common general aviation aircraft produce less noise than other more prevalent sources of noise -- such as trucks, sirens, construction equipment, and motorcycles. Despite its minimal contribution to noise, general aviation is often a major victim of the problem. In the name of noise, communities routinely seek to impose meat axe restrictions on the access of all aircraft to local airports, including general aviation aircraft.

THE IMPACT ON GENERAL AVIATION

General aviation airports have been the site of controversies yielding important legal precedents defining the relative federal, state, and local role in regulating noise. For example, AOPA was among several parties to a major lawsuit in which the U.S. Court of Appeals for the Second Circuit affirmed a federal district court order enjoining the State of New York from imposing a nighttime ban on the use of Republic Airport in Suffolk County, New York. That 1983 ruling came on the heels of a federal district court order permanently enjoining the County of Westchester, New York from imposing a curfew at Westchester County Airport -- a case in which AOPA was also a major participant.

These cases were decided on the grounds that blanket restrictions on nighttime operations are a discriminatory and unconstitutional exercise of local power which would have an adverse impact on the flow of interstate commerce. The curfews proposed at Republic and Westchester Airports were also deemed to constitute a breach of the terms and sponsors assurances set forth in the grant agreements entered into with the Federal Aviation Administration as a condition to receiving federal airport funds.

While we prevailed in these precedent setting cases, these are merely among the most visible of the many struggles over locally imposed noise restrictions in which AOPA is and has been

involved. Even the seemingly settled question continues of whether nighttime curfews are permissible. AOPA is currently challenging a nighttime curfew imposed locally at Pitkin County Airport in Aspen, Colorado.

The wide-ranging patchwork of local restrictions about which the Subcommittee has heard so much during several days of testimony has as much impact on general aviation as it does upon airline operators. And it is often unclear which restrictions are permissible and which are not -- which actions conflict with federal authority to regulate the navigable airspace and which are within the authority of an airport proprietor. The uncertainty within the pervasive and complicated issue of aircraft noise stems in large measure from the lack of a preemptive National Noise Policy establishing uniform standards reflecting the national interest.

A NATIONAL NOISE POLICY

AOPA has previously advocated a National Noise Policy. We believe a national policy must focus on three areas.

First, a National Noise Policy should establish uniform federal standards which are clear and realistic and against which the actions of local airport proprietors can be easily measured. Second, FAA must be empowered to bar airport proprietors from implementing operational or economic restrictions which conflict with federal standards. Third, a National Noise Policy must require communities to enforce meaningful land use compatibility policies to ensure that noise-sensitive areas are protected or developed in a manner consistent with the existing and future operations of local airports.

Federal standards. Uniformity is essential to regulation of our air transportation system, and perhaps no other activity is so pervasively regulated by the federal government as aviation. Direct and preemptive authority has been placed in the FAA to control certification of aircraft and airmen and the operation of aircraft within the navigable airspace.

Yet FAA possesses only limited or indirect authority to regulate airports -- a vital component of the air transportation system. Individual airports often impact operation of the entire system by imposing local access or operating restrictions in the name of noise. This has resulted in the patchwork of local regulation which we believe can only be remedied by development of a preemptive National Noise Policy.

That is not to say that state and local governments should play no part in developing such a policy. The issue of aircraft noise requires a coordinated and cooperative effort, and a

National Noise Policy must balance a host of competing, sometimes conflicting interests. But, ultimately, a national policy must control. It must specify clear lines of authority to guide local governments seeking to implement permissible noise restrictions, consistent with the overriding national interest in an efficient and safe air transportation system.

AOPA is among the participants on the Aviation System Capacity Task Force which helped to develop the recommendations on noise policy recently submitted to FAA Administrator Busey. We generally endorse the recommendations of the Task Force, including the recommendation that an important component of a National Noise Policy is a phasing out of Stage 2 aircraft.

Federal review and approval of local restrictions. A National Noise Policy will be meaningless unless the FAA is empowered to bar all locally imposed operating or access restrictions which conflict with federal noise standards. In our view, FAA should be required to review and approve all locally proposed restrictions before such restrictions can be legally implemented. Federal review and approval should be based on specific criteria, including the following:

4. consideration of potentially less restrictive alternatives;

3. an analysis of the impact on flight safety;

2. an analysis of the effect on system efficiency and the cost of operating aircraft; and

1. clear justification based on recognized procedures, such as FAA's existing Part 150 program.

AOPA agrees with those who advocate that a private right of action should be established to permit aircraft operators to take legal action against airport proprietors imposing restrictions in conflict with a National Noise Policy. A private right of action would help ensure that appropriate remedies are available for operators subjected to illegal restrictions, and would also reinforce FAA's own authority to assure the integrity of the system.

Land use compatibility planning. AOPA is an aggressive advocate of state and local laws which control incompatible development in the vicinity of airports and which limit the establishment of obstructions to the navigable airspace. Zoning laws ensuring compatible land use are essential to ensure appropriate limitations on development within noise and safety sensitive areas, as well as to protect the public interest and investment in our nation's airports.

Strong federal incentives must be made available to FAA in order to compel state and local governments to adhere to sound land use compatibility practices in the vicinity of airports. Advances in technology have resulted in significantly more quiet aircraft, and future advances will perhaps yield further reductions in aircraft noise. But there is an inevitable technological limit to noise reduction, since all aircraft unavoidably generate some degree of noise.

While the industry is striving to develop ever more quiet aircraft designs, state and local governments must do their part through adequate planning and zoning to help maintain a separation between aircraft and affected community residents. Unfortunately, the political will to act in this regard is often weak. FAA must be armed with an effective "carrot and stick" to compel adequate zoning.

At a minimum, such incentives should include an absolute prohibition on federal funding for airports located in communities which have not developed, implemented, and maintained an approved land use compatibility plan. And it is vital that land use planning take into account existing operations at airports, as well as potential future development. Failure to account for future development merely postpones the inevitable "slow death" of airports falling prey to the kind of encroachment which results from poor planning and ineffective zoning.

* * * * *

Those our views on the issue of aircraft noise, Mr. Chairman. Thank you again for this opportunity to testify. I will be happy to respond to questions.

37-824 0 - 91 - 26

BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
OF THE
U.S. HOUSE OF REPRESENTATIVES

TESTIMONY OF CAAN

CITIZENS FOR THE ABATEMENT OF AIRCRAFT NOISE

4 OCTOBER 1990

Communications with respect to these comments should be addressed to:

CAAN
P.O. Box 40093
Washington, D.C. 20016

BEFORE THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
U.S. HOUSE OF REPRESENTATIVES

Testimony of **CAAN**
(Citizens for the Abatement of Aircraft Noise)

Mr. Chairman and Members of the Subcommittee: CAAN, the Citizens for the Abatement of Aircraft Noise, appreciates and welcomes this opportunity to present to you its views on aviation noise policy. As you can see from our name the generation of excessive noise by aircraft is the sole reason for our existence. Our membership comprises 67 neighborhood and civic citizens associations (for example, Palisades Citizens Association of NW, D.C. Alexandria Civic Federation of Alexandria, VA); and represents over 500,000 people living in our region. Our Board of Directors is composed of 9 individuals - three from Maryland, three from Virginia, and three from the District of Columbia. Our member associations and our individual supporters are also from these three jurisdictions which comprise our metropolitan area.

The issue concerning the amount of excessive aircraft noise to which our communities are subjected is a difficult one. It is a difficult and multifaceted issue on which your Subcommittee and the Congress as a whole will deliberate with considerable care to ascertain the best interests of the nation as a whole. CAAN understands the need for air commerce to move people and goods rapidly and efficiently in the daily course of doing our nation's business. CAAN also understands that the well-being of our nation and the quality of life in many of our communities can be seriously degraded by aircraft noise.

On the one hand there is a cost to the air carrier industry for expenditures that must be made to reduce aircraft noise. There is also a potential cost to air passengers and to shippers if flights to some destinations are not made at the times they most desire. These costs and potential costs to the aviation industry and to its users are counterbalanced by the very real costs of aircraft noise to the many communities which have airports as neighbors. The costs on both sides must be understood and carefully weighed. A balance must be struck.

The costs of quieter aircraft and engines in dollars can be readily determined. Potential costs to passengers and shippers are more elusive.

They are elusive because alternatives do indeed exist if a flight to a selected airport cannot be made at just the time desired. (For example, to ship or to travel earlier or later, or to use a nearby airport along with ground transportation, or to plan business operations such that a few hours or overnight is not critical.) The costs to communities - to the individuals that live and work in them - are very real but are often difficult to assign a hard dollar value. And frequently there are no alternatives available. (For example, there is no alternative for children in my community playing outdoors in the schoolyard; or for my neighbors to work or relax in our gardens.)

The principal concern of CAAN is the Washington metropolitan area, and , in particular, the Washington National Airport. However, many of the recommendations we will make apply to other airports. In fact, there is rapidly increasing activity among citizen groups in communities all over our nation to reduce the intrusion of aircraft noise into our lives. This activity by citizen groups is also strongly reflected by local elected political officials. For example, our region has a Metropolitan Washington Council of Governments representing the 21 governmental jurisdictions . These 21 governments have been unanimous in requesting the Metropolitan Washington Airports Authority to reduce noise from National Airport. Thus, both our citizens and our elected officials have recognized the degradation to our environment caused by aircraft noise. The Metropolitan Washington Airports Authority has not complied with any of these requests.

CAAN would like to have your subcommittee consider the following recommendations:

1. No legislation should prevent locally elected officials from responding to the needs of their constituents. Problems concerning airport noise are intensely local matters between an airport and its immediate neighbors. Each situation is different. Washington has an airport in the center of a densely populated area and my community was in existence before the Wright brothers!

2. The enormous social cost of aircraft noise should be studied and calculated and used to find a balance in the national interest between aviation users and airport neighbors. The damaging effects of noise on people; the lost sleep; the loss in sales value of homes under the flight path; the interruption of communications in homes, schools, hospitals, churches, workplaces and recreation -- all of these and more social costs have been demonstrated and must be weighed in the balance.

3. The proprietary rights of airport operators to specify noise regulations for their own airports must be respected. It should be their duty to operate their airports in response to local conditions.

4. The 65 Ldn contour for noise is not a satisfactory measure of tolerable noise in a community. The contour containing people adversely affected by aircraft noise should be changed to a lower value (say, 50 Ldn); or to a new metric which more accurately measures noise impact on people. Many people find their lives adversely affected at noise levels much lower than 65 Ldn.

5 Noise and pollution are by-products of the airline industry. This industrial waste is the responsibility of the airlines and should not be absorbed by those living under the flight paths.

6 The noisiest aircraft (generally Stage 2) should be phased out as soon as possible (before AD 2000 at critical airports) - and certainly before the noisy planes that are prohibited in Europe are added to the U.S. fleet.

Conclusion: The overall impact of aircraft noise is increasing (in spite of the introduction of some Stage 3 aircraft) due to rapid growth in the number of landings and takeoffs together with the increase in flights after 10 PM. Each year a larger segment of our population is adversely affected. Citizens and their local elected officials are organizing to stop this form of environmental degradation. Their voices must be heeded.

#5

Mr. Chairman,

Citizens for the Abatement of Aircraft Noise is an umbrella organization for citizens' organizations in the metropolitan Washington area concerned with the aircraft noise that is plaguing the Nation's Capital, in particular, from National Airport.

As noise pollution is increasing in this metropolitan area we welcome the attention given by your Committee to this issue. However, CAAN wants to express its serious concern about recent recommendations (FAA/DOT Aviation Systems Capacity Task Force) to prohibit local airport operators from imposing airport noise control measures, involving types or number of aircraft or time of day; and to preempt the planning, zoning, and land use powers of local governments.

We believe that aircraft noise in a particular area can be addressed in a comprehensive fashion only if there is case-by-case attention to this problem, i.e. if local airport authorities in cooperation with local governments are empowered to respond both to the capacity and efficiency problems at a given airport and the quality of life in the area surrounding the airport.

As you are aware, Mr. Chairman, National Airport is

administered by the Metropolitan Washington Airports Authority, which has been set up under legislation that limits its powers to take decisions that would directly address the noise pollution problem in this area. Since the Airports Authority is accountable only to the Board of Review, which is composed of members of Congress, none of whom can be from the local jurisdictions, this Authority may (and does) neglect the advice and recommendations of local governments. Consequently, CAAN has been emphasizing the urgent need for local authorities and citizens affected by the noise to participate in the development of a rational air transportation policy for this metropolitan area. Unable to get the Airports Authority to respond responsibly to efforts to reduce the jet noise at National, CAAN took legal action in November 1988 by filing suit in the United States District Court for the District of Columbia against the Airports Authority challenging the constitutionality of the veto power f the Congressional Review Board.

Consequently, Mr. Chairman, the citizens of this area believe that, while it is definitely in the public interest to reduce aircraft noise in the heavily impacted area under National Airport, this problem <u>cannot</u> be addressed through a <u>federal</u> noise reduction policy but only through coordinated local efforts to participate in the development of transportation policies that respond to the needs of the area. In this respect, CAAN would like to emphasize the

"special circumstances" at National Airport, which include those to be found at all airports serving over 10 million passengers annually, being located less that 4 miles from the population center of an urban area, and in the immediate vicinity of major public institutions and national memorials, and having no crosswind or secondary jet runways to assist in the dispersion of the sound from take-offs and landings.

In conclusion, CAAN wants to emphasize its support for the Metropolitan Washington Council of Governments and its Committee on Noise Abatement (CONANDA). In a recent letter to Transportation Secretary Skinner, the Chair of CONANDA states that "It is the general consensus of CONANDA that the airport related provisions of the national transportation policy should not inhibit the current authority airport operators have to establish and enforce noise regulations as long as they do not unduly inhibit commerce, discriminate, or interfere with safety."

CAAN agrees with and supports that statement for the reasons detailed above.

Thank you.

AVIATION SUBCOMMITTEE ON
PUBLIC WORKS
AND
TRANSPORTATION
U. S. HOUSE OF
REPRESENTATIVES

OPENING STATEMENT
OCTOBER 4, 1990

HEARINGS ON
FEDERAL AVIATION
NOISE POLICY

We appreciate the opportunity to testify during this hearing before the honorable subcommittee on aviation concerning a comprehensive review of the Federal aviation noise policy. We are attorneys currently engaged in federal litigation with the City of Austin, Texas concerning, in part, air operations from the City's owned, operated and managed Robert Mueller Municipal Airport (RMMA) - Smock et al. v. City of Austin, Cause No. A-90-CA357, Austin Division, Western U. S. District Court of Texas. Our clients are just some of the more than 28,000 Austinites as well as 5,000 plus students, 39 churches and 9 parks that are within the 65 LDN noise contour as identified in the 1986 Greiner consultant report to the City (Exhibit No. 1). That report and all other consultant reports performed on behalf of the City in connection with the operations of RMMA have always insisted that RMMA's operations should be moved elsewhere for safety, environmental and economic reasons.

RMMA has been located since 1930 at a inner-city site. It is completely and adjacently encircled by dense and mature residential and commercial development. No meaningful compatible zoning in RMMA has ever been done by the City. The airport, the 51st busiest U. S. airport, consists of approximately 715 acres and services air carrier, air cargo, air taxi and commuter, general aviation, and military air operations that operate around the clock. RMMA, like the City of Austin, experienced phenomenal growth in the 1980's in air carrier and commuter operations that required the City to conduct new studies of the airport's capacity for future expansion as well as considering other sites for possible airport relocation. On or about July 1, 1986, the Federal Aviation Administrator called on the City to expand RMMA or "face federally imposed flight restrictions."

In 1986 the City authorized a safety survey that was conducted by the LBJ School of Public Affairs at the University of Texas. The study surveyed RMMA and other comparable airport operations. The study found that RMMA was "seriously constrained with respect to design and layout; it ranked lowest in amount of acreage, it had the shortest main runway, lacked reliable backup runways for commercial aviation, and had the smallest clear zones" in comparison with other sampled airports with similar aircraft mix and operations. The study also noted that the problems posed "limitations on the type and volume of aircraft that could operate while maintaining the current level of safety". Other problems identified affecting safety were the "dense development surrounding the airport", and the "40 off-site obstructions to air navigation", and the "conflicting air space requirements between RMMA and Bergstrom Air Force Base". The survey stated that RMMA was a "minimal facility with respect to layout and design for the number and type of aircraft it services." and that "concern for minimizing loss of life or damage to property in the vicinity of the airport is the responsibility of the City."

The City's Greiner consultant also prepared an environmental assessment report of the current air operations at RMMA and those forecasted for 1996 and the year 2006. The other part of the study considered facility development options at RMMA. The environmental assessment report contained a computer

model study using the FAA's intergrated noise model version 3.8. The model predicted the aircraft noise at and around RMMA based on facilities, aviation operations and types and with strict adherence to a voluntary curfew. No single event level of noise was ever performed. The model, however, clearly understates actual noise episodes in that it averages noise over a year and not the actual noise episode itself. Further, the model only considered strict voluntary curfew adherence when RMMA's own records reveal that such assumption is grossly erroneous. Further, that model did not figure in the recent great influx of air cargo operations with their older and noisier engines and the recent advent of Conquest's hubbing operations at RMMA. A recent letter from the consultant's project director (Exhibit No. 2) shows the clear intent by the City to skew the modeling results and thereby understate the noise contours.

The FAA's noise and land use compatibility table and the affect of the persons and property that are located within the various noise contours is reflected in Exhibit No. 1. Also, the impacted area involves the lower socioeconomic strata of Austin society and encompasses approximately 40 percent of the total black population of Austin, Texas. The Austin Greiner team prepared a recommendation in conjunction with the FAA to the City concerning whether RMMA should be expanded or its air operations relocated. The Greiner team, the Citizens Airport Task Committee and the FAA recommended to the City that due to safety, costs and environmental concerns of the expansion options that the clear choice was to move the air operations to another site. The FAA even stated that it would not provide any discretionary money for RMMA's expansion process (Exhibit No. 3).

The City accepted those recommendations and put the issue before its citizens on November 3, 1987. The City represented to the voters that there would be a binding referendum to provide a choice of expanding RMMA or relocating the airport operation near Manor, Texas. The City provided information to the public concerning the referendum and the comparison of the propositions between expansion and relocating airport operations. (Exhibit No. 4) The referendum was hotly debated and the neighborhood around RMMA and east Austin (east of Interstate Highway 35 which is predominantly minority habitated) was galvanized to provide a record voter turnout. A very high city-wide voter turnout on the referendum resulted in approximately 56 percent of the votes voted for authorizing the relocation of RMMA versus only 12 percent voting in favor of expanding RMMA.

Our clients were among those who relied on the pre-election representations by the City in promotions by the City to vote for the relocation of RMMA. It is our contention that the 1987 airport referendum created a contract between the voters and citizens of Austin with their government. The City had disseminating written information that RMMA's expansion was too costly and "will have a severe socioeconomic impact on surrounding communities, as well as increase an already severe environmental impact." The local state legislators to sponsor legislation governing noise abatement procedures for RMMA. The law mandates noise abatement by certain dates for public schools, public buildings and churches within the 65 LDN contours of RMMA. This law was passed to provide a strong financial incentive for the City to meet datelines to have a replacement airport by December 31, 1996. (Exhibit No. 5). Furthermore, the local legislators realized that the City had never applied for FAA part 150 noise mitigation funds even though the City has known of RMMA's adverse environmental impact to its citizens and students.

On January 11, 1990, the U. S. Department of Defense announced that Bergstrom Air Force Base (Bergstrom) would be studied for possible closing. Mayor Cook just happened to be in Washington, D. C. at the time and unilaterally ordered the suspension of further land acquisitions services for Manor. Further, the airlines notified the City that they, in light of the Bergstrom announcement, were "committed to work with the City to determining of a replacement airport is feasible". It has been extremely clear from the outset that the so-called Bergstrom option was nothing but a partisan ruse by political opportunists and certain airlines to combine to slow down the Manor airport. (Exhibit No. 6)

On February 15, 1990, the City authorized a 60-day feasibility study to be undertaken to review the possibility of relocating the air operations at RMMA to Bergstrom. The City's own study stated that the site itself raised several issues to impact feasibility - 1) location of a city landfill, 2) 24 toxic waste sites, 3) ownership and disposition of the base is uncertain, 4) utility systems had not been investigated, 5) location of prehistoric and historic archeological sites, 6) roadway access and improvement costs. None of these issues were assigned a cost nor a date in the feasibility study. The study provided two airspace alternatives. One with a one runway scenario and another with two widely spaced parallel runways. The FAA is of record saying they would not provide discretionary funds for the one runway scenario because it would not increase air space capacity. Consequently, the only alternative would be for the two widely spaced runways which costs more than the proposed Manor airport. Consequently, the cost of moving to or even using Bergstrom as a municipal airport versus Manor is more expensive and is more of an environmental problem.

Certain City elected officials have questioned the affordability of a new airport yet the City's own expert financial consultants, Peat Marwick and Main, have repeatedly stated that the master plan for the Manor airport is financially feasible. The FAA issued a Final Environmental Impact Statement [FEIS] that stated that the Manor site would be far superior to serious environmental problems at RMMA. The FEIS also stated that "there is no feasible and prudent alternative to the Manor site, when not only environmental, but all factors are considered."

This history of problems involving environmental, safety and costs factors from the operations of RMMA is a sad commentary and especially since our local council has decided to ignore the vote of its citizens. The Travis County Coalition of African-American Elected Officials has publicly pointed out the problems unique to many of the Afro-Americans who live in the surrounding neighborhood of RMMA. These people were illegally zoned in a "Negro district" by the City in 1928 before RMMA existed. It is a medical fact that everyone's body immunity system is reduced with stress and stress can be brought on by loud and continuous aviation noise. It is also a medical fact that blacks are more susceptible to heart attacks and strokes. Consequently, the Afro-Americans are the most medically impacted of the Austin citizens living within the 65 LDN noise contours of RMMA.

In summation, we have given this background in hopes that you as a committee understand that aviation noise is a complex problem that cuts across many different issues in a community. It is not just a minor problem in the national aviation system.

To address the six questions that were posed by the committee, we have

these following comments to make:

Question No. 1: We feel that the airlines must be encouraged and, in some cases, mandated to move to Stage III airplanes. Apparently air cargo carriers are recycling the air carrier's State II airplanes that are noisier. Obviously, if the noise is being emitted by air cargo carriers instead of commercial air carriers, the problem is just being moved from one type of carrier. That shifting source of the noise contributes nothing to the solution of the problem. There should be flight restrictions applied across the board to airplanes that have the noisiest engines. A financial penalty should be assessed against these noisy airplanes and paid to the persons adversely affected. It is a medical fact that noise creates a stress and stress can lead to heart attacks and strokes. Therefore, it is without question that there is a need to prohibit and restrict federal noise admissions from planes. Further, continuous 24-hour operations of air operations similar to RMMA create sleepless nights for its inhabitants as well as the obvious property and personal damages.

Question No. 2: The state and local government should have influence on the standards and procedures promulgated by the Federal Aviation Administration. It is our position that generally the local government should have more say and input over air craft operations because its citizens are being affected by those operations. Unique local history, topography and air traffic mix and routes must be considered paramount to forcing a systematic national aviation noise policy on local conditions. Government that's closer to its people is always preferable than to a distant centralized decision center. However, we would comment that in Austin's case it obvious that the voters and its local government are at odds.

Question No. 3: There is a crying need for changes in the nuisance and inverse condemnation laws in that too often these issues on aviation noise are summarily dismissed by both state and federal courts due to the various statutes of limitations. The progression of jet aircraft noise and the knowledge of its affect on the public health should be the starting point when deciding when a statute of limitation should run on these suits. Noise pollution is just now receiving the same consideration as air and water pollution. Austin's Mayor has incorrectly stated that RMMA was there before the residents. That insensitive statement provides no meaningful solution to the larger public health issue. Certainly, only since the late 1950's was there even intermittent jet noise at RMMA. Clearly, statutes of limitations should not run against people who had no knowledge that noise could adversely affect their property values and physical and mental well-being. It is one thing to say noise is an annoyance and its another thing to understand that continuous bombardment of loud noise can cause heart attacks and strokes.

Question No. 4: It is our understanding that there are several billions in federal trust for the purpose of constructing new airports to enhance the aviation capacity in the United States. That fund should be used for its designated purposes and should be scrutinized to make sure that there be more competition among the aviation carriers to provide better service to the communities that they serve. Point in fact is that the RMMA is controlled by the airlines as a spoke for the hubs of both DFW and Love Field in Dallas as well as both Hobby airport and Intercontinental airport in Houston. Consequently, the dominant carriers in those airports are not interested in seeing the Austin aviation situation become competitive. Direct flights elsewhere would bypass those hubs. We would recommend to this body to review

the state bill in California that would provide fines to carriers whereever they are licensed to gates that are not being used. We think daily fines should be paid by carriers to the FAA and to the local airport proprietor for licensed gates not used. This will free up some of the artificial gate shortage problems that have come about by the advent of the hub and spoke air transportation system

Question No. 5: We think that there should be changes in standard for federal regulation of air space to provide the most minimum of environmental impact of the routes and flight patterns in arriving and departing from airports. We would submit that these flight patterns be changed from time to time if residential areas are impacted simply to be sure that all surrounding airport neighborhoods regardless of their wealth and race be equally impacted.

Question No. 6: We recommend that there be a change in the federal program of assistance for noise abatement planning to provide that private citizens could act as sponsors in the programs. In Austin, our government has never sought part 150 noise mitigation funds until legislatively mandated. Consequently our clients as others should be in a position to seek those funds and require the airport proprietor to pick up its usual share. We would also recommend that there is a need for mandatory requirements for local restrictions on the use of land impacted by aircraft noise. It seems important to us that the federal dollars should be wisely spent and not have to be used to mitigate the same property again and again. We feel that the federal dollars used to pay for compatible land use should require that the local sponsor be required to comply with federal zoning decisions or lose future federal funding.

We also want it to be on record that we support both the February 23, 1990 and May 11, 1990 letters from the United States Environmental Protection Agency, Region 5 to the Federal Aviation Administration, Great Lakes Region, involving the Toledo Express airport draft environmental impact statement. The letters discuss noise modeling performed for the draft environmental impact statement. They questioned the usual assumptions used in the noise modeling. We also note that the EPA's regional office was also concerned about the modeling's factoring of a specific nighttime impact of noisy planes. Further, like the EPA regional office, we feel like a single event analysis must be done in all modeling. Single event analysis clearly describes the actual noise impact on the property and person of people living within the perimeters of an airport inasmuch as any averaging will only lower the value assigned to that noise. Averaging of noise over a period of time is simply like the average of a man's temperature when one leg is in hot water and his other leg is in cold water. On average, his temperature should be fine but obviously, that's not the case.

We also are concerned about noise mitigation provided in part 150 studies in that it is our feeling that all houses and schools within at least the 65 plus LDN noise contours should be purchased. Aviation easements should be bought for those houses in 55 plus LDN. Lastly, we do not feel that any environmental impact statement should be allowed to be issued until all of the money to mitigate those problems are identified and available. There is no remedy to people to say yes, you are hurt and we will provide money if and when it becomes available. Finally, loss of hearing from aviation noise cannot be compensated by dollars alone.

In summary, we also support the statements of the National Organization to Insure a Sound Controlled Environment. We thank you for providing us an opportunity to testify about the concerns of Austin's citizens. We will be happy to answer any questions that you may have.

Respectfully submitted,

/s/
J. Mitchell Clark
By John D. Pieratt

/s/
Charles C. Smith
By John D. Pieratt

John D. Pieratt

ENVIRONMENTAL IMPACTS MATRIX
COMPARISON OF EXISTING (1984) AND LONG-TERM (2004)

Evaluation Factor	Units	Existing Conditions (1984)	Long-Term (2004) Alternatives C-4C	Long-Term (2004) Alternatives D-1
BACKGROUND				
Aircraft Operations/Year	Number	231,024	364,360	364,360
Total Enplaned Passengers	Million	1.852	6.004	6.004
NOISE IMPACTS				
Population				
Residing within 65-70 Ldn Contour	No. of Persons	16,130	15,134	11,772
Residing within 70-75 Ldn Contour	No. of Persons	8,296	2,631	3,535
Residing within 75+ Ldn Contour	No. of Persons	3,109	2,848	4,885
Total within 65+ Ldn Contour	No. of Persons	27,535	20,613	20,192
No. of Households				
Within 65-70 Ldn Contour	Number	6,287	5,758	5,185
Within 70-75 Ldn Contour	Number	3,147	967	1,299
Within 75+ Ldn Contour	Number	1,182	983	1,389
Total within 65+ Ldn Contour	Number	10,616	7,698	7,863
Neighborhoods				
Wholly or partially within 65-70 Ldn Contour	Number	13	6	6
Wholly or partially within 70-75 Ldn Contour	Number	4	3	7
Wholly or partially within 75+ Ldn Contour	Number	8	11	9
Wholly or partially within Total 65+ Ldn Contour	Number	25	20	22
Lesser noise impacts than existing condition	Number	--	9	6
Greater noise impacts than existing condition	Number	--	5	8
Sensitive Receptors				
Within 65-70 Ldn Contour				
Churches	Number	22	3	19
Schools	Number	4	3	6
Parks	Number	6	3	6
Other Community Facilities	Number	2	1	2
Within 70-75 Ldn Contour				
Churches	Number	9	4	4
Schools	Number	2	1	2

EXHIBIT 1

ENVIRONMENTAL IMPACTS MATRIX
COMPARISON OF EXISTING (1986) AND LONG-TERM (2006) (Cont'd

Evaluation Factor	Units	Existing Conditions (1986)	Long-Term (2006) Alternatives C-4C	D-1
Parks	Number	2	2	1
Other Community Facilities	Number	2	0	1
Within 75+ Ldn Contour				
Churches	Number	8	9	9
Schools	Number	1	1	1
Parks	Number	1	1	2
Other Community Facilities	Number	1	2	1
Total 65+ Ldn Contour				
Churches	Number	39	16	32
Schools	Number	7	5	9
Parks	Number	9	6	9
Other Community Facilities	Number	5	3	4
Total Affected Acres				
65-70 Ldn Contour	Acres	3,456	2,424	2,414
70-75 Ldn Contour	Acres	1,728	932	1,003
75+ Ldn Contour	Acres	1,088	843	865
Total 65+ Ldn Contour	Acres	6,272	4,199	4,282
Total Affected Residential Acres				
65-70 Ldn Contour	Acres	1,264	782	904
70-75 Ldn Contour	Acres	653	152	232
75+ Ldn contour	Acres	329	185	336
Total 65+ Ldn contour	Acres	2,246	1,039	1,472
ROAD TRAFFIC EFFECTS				
Survey Vehicle Trips/Day	Number	9,610	26,110	26,110
Road Segments Removed	Number	0	5	8
Road Segments Exceed Capacity	Number	0	6	4

EXHIBIT 1

June 12, 1990

Honorable J.J. "Jake" Pickle
U.S. Representative, 10th Congressional District
763 Federal Building
Austin, Texas 78701

Dear Representative Pickle:

The most recent decision of the Austin City Council to not authorize a point-by-point, "apples to apples," evaluation of the proposed new airport near Manor as compared to a similar facility at Bergstrom AFB has prompted this correspondence. I was the Project Director of the Greimer Austin Team for the long-range planning and environmental assessment of Robert Mueller Airport which was conducted in 1985, 1986, and 1987. As such, I not only directed all of the technical effort put forth to define existing conditions and project future conditions, but also conducted over 50 public hearings designed to solicit public input and disseminate technical data. These events were separate and apart from the public hearings held for the Manor project.

With that brief introductory information in mind, I would respectfully offer the following comments for your consideration:

> The noise-level evaluations were performed utilizing the assumption that no late night (midnight to 6:00 a.m.) flight curfew violations occurred on a regular basis. This assumption was based on representations by the City that the curfew was effectively enforced and would continue to be so enforced in the future.
>
> While this may have been true, and it is not entirely clear that it was when the original work was done, it is certainly not true today. The tremendous increase in late-night air cargo and air carrier operations will undoubtedly increase the magnitude of the noise impact areas.
>
> The Greimer Austin Team originally proposed to conduct a series of noise monitoring tasks as part of the environmental assessment in order to develop accurate single-noise event data to be utilized in conjunction with the FAA Integrated Noise

EXHIBIT 2

Model (INM). This recommendation was made because we recognized some of the shortcomings of the INM when attempting to assess actual noise impacts at sensitive receptors such as Ridgetop Elementary School and A.S. Johnston High School. This recommendation was declined because the then contract manager for the City deemed the work to be too expensive and potentially inflammatory. Therefore, neither the City nor the FAA has a complete analysis of the noise impacts created by aircraft operations at Robert Mueller Airport. In essence, the City only authorized the minimum effort necessary to meet minimum standard FAA environmental assessment criteria and did not explore the true level of noise impacts created by single flyover events.

A significant amount of socioeconomic data was developed in the environmental assessment. As an example, over 38 percent of the African-American population of the City is adversely impacted by noise created by aircraft operations at Robert Mueller Airport. While acknowledged, this type of data has been subsequently forgotten.

Projections of aircraft operations at Robert Mueller Airport were the subject of great public debate and consternation during the course of the project. It appears that our projections are being surpassed already, in a supposed down economy.

The City of Austin and the Federal government have invested a tremendous amount of energy and resources in the pursuit of information about Robert Mueller Airport which, when presented in an appropriate manner, resulted in a decision to relocate the airport. Recent actions or inactions by the City have only served to confuse the issue and negate the bond election to move the airport facility. No comparable studies or analyses have been conducted for Bergstrom AFB which creates a void of objective data by which to judge the merits or demerits of a commercial airport at that facility. It appears that other forces are involved in the current infatuation with Bergstrom; an attitude which is contrary to your efforts to preserve the operation of Bergstrom to the benefit of Austin and the nation.

Please accept these comments in the spirit intended. It appears that the best interests of Austin and national aviation are not being well represented by the current Austin political leadership. A correction of this attitude may not be possible without the direct involvement of your office and other branches of the Federal government.

EXHIBIT 2

Please feel free to call on me for further assistance should you deem it appropriate.

Very truly yours,

Richard J. Wheeler, Jr., P.E.
Vice-President

EXHIBIT 2

US Department of Transportation
Federal Aviation Administration

Southwest Region
Arkansas Louisiana
New Mexico Oklahoma
Texas

Fort Worth, Texas 76193-0000

SEP 15 1987

The Honorable Frank Cooksey
Mayor of Austin
P.O. Box 1088
Austin, TX 78767

Dear Mayor Cooksey:

Since May 1986, the Federal Aviation Administration (FAA) has actively participated with the city of Austin and its consortium of technical experts in assessing the future needs of aviation and the impacts on metropolitan Austin. We endorse the process utilized as having fully analyzed the options available.

You will recall that in October 1986, we strongly recommended Alternative D-1 as the preferred option for remaining at Robert Mueller Municipal Airport. In supporting that option the FAA was fully aware of the severe environmental impacts involved and thus recommended that analysis be made of alternative airport sites.

The selection, analysis and comparison of the Manor site option provides clear evidence of its benefits versus remaining at the present facility. The Manor site option is unquestionably superior on the bases of environmental impacts and cost, particularly since Robert Mueller Municipal Airport will necessarily be closed and revenues realized to offset capital improvement costs for the replacement airport. More importantly to the FAA, the Manor option provides significant capacity enhancement and negates airspace conflicts. Further, the environmental impacts to improve Robert Mueller Municipal Airport are not acceptable.

As we have stated before, the FAA has historically allowed and even encouraged airport sponsors to implement the planning option most beneficial to local concerns. This has not always provided maximum benefits to the national airspace system nor increased airport capability to reduce delays. More aggressive decisions and timely actions are required.

Therefore, the FAA endorses the Manor option to the extent that, now, it is the only alternative that would receive our support for Federal discretionary funding. If the city council elects to proceed with development of a replacement airport at Manor, and it is deemed environmentally acceptable, you have our commitment to a partnership to maximize Federal participation for that development.

We appreciate this opportunity to enhance the aviation future for Austin and the national airport system. You, your staff, and consultant teams are complimented on an extremely comprehensive effort.

Sincerely,

C. R. Melugin, Jr.

Director, Southwest Region

EXHIBIT 3

OTK

AIRPORT PROPOSITIONS ONE AND TWO
NOVEMBER 3rd ELECTION

Prepared and distributed by The City of Austin Public Information Office

On September 17, 1987, the Austin City Council placed two items on the November 3, 1987 ballot aimed at resolving Austin's long-range aviation needs. After a public hearing, the Council voted in favor of moving the airport to Manor, a position supported during the public hearing that evening by both the Airport Advisory Board and the Federal Aviation Administration.

The Council placed two items on the ballot: Proposition One, to move the airport, and Proposition Two, to expand Mueller for long-term use.

PROPOSITION NUMBER 1
RELOCATION AND CONSTRUCTION OF A NEW AIRPORT

Shall the Austin City Council's decisions be affirmed to authorize construction of a new airport at a recommended site near Manor, Texas; to make interim improvements to Robert Mueller Municipal Airport; to authorize financing of these projects by the issuance of airport system revenue bonds in an amount which shall be limited to the airport's ability to repay the obligation and shall not exceed $728,000,000 with the total amount of the bonds to be adjusted for financing costs and inflation and reduced by the amount received from Federal discretionary airport trust funds and by funds obtained by the City from the sale or lease of Robert Mueller Airport which shall be closed to aviation upon opening of the new airport; to not use property tax proceeds in moving, constructing or operating the new airport?

WHAT DOES PROPOSITION ONE DO?

Proposition One affirms the Council's decision to:

A. Close Mueller to aviation and move the airport to Manor.
B. Make interim improvements to Mueller Airport.
C. Finance the new airport as follows:
   1. City is authorized to issue up to $728 million in airport revenue bonds, but that amount is limited in two ways:
      a. Bonds cannot exceed the airport's ability to repay them from airport revenues;
      b. Amount of bonds is reduced by the amount of money received from Federal discretionary airport funds and the amount realized by the sale or lease from Mueller after it is closed to aviation. Inflation and financing costs will be considered in determining the exact amount of the reduction.
   2. No property taxes can be used to move, construct, or operate the new airport.

PROPOSITION NUMBER 2
LONGTERM EXPANSION OF ROBERT MUELLER AIRPORT

Shall the Austin City Council be authorized to expand Robert Mueller Municipal Airport; be authorized to finance the project by issuing a maximum of $1,118,000,000 for expansion and for interim improvements in airport system revenue bonds, with the total amount of the bond to be adjusted for financing costs and inflation and reduce or retired by any proceedf from subsequent water an wastewater system bonds and general obligation bonds ap proved by voters?

WHAT DOES PROPOSITION TWO DO?

Proposition Two authorizes the Council to:

A. Expand Robert Mueller Airport for long-term use.
B. Make interim improvements to Mueller.
C. Authorizes the city to issue up to $1.118 billion in airport sys revenue bonds.
D. Limits total amount of bonds to be issued by any amoun subsequent general obligation bonds or revenue bonds proved later by the voters in order to make the street and o improvements needed for the expansion of the airport. I tion and financing costs will be considered in determining exact amount of the reduction.

COMPARISON OF PROPOSITIONS ONE AND TWO

	Manor Site	Mueller Expansic
Amount of airport revenue bonds	$728,000,000	$1,118,00(
Federal Aviation discretionary funds available?	Yes	No
Property tax money needed?	No	Likely
Water-wastewater revenue money needed?	No	Likely
How long to get from downtown:		
A. During peak hours?	30 minutes	22 minut
B. During off-peak hours?	20 minutes	12 minut
Environmental Impact:		
A. People displaced	962	15,0
B. Businesses displaced	12	2
C. Schools displaced	0	
D. Churches displaced	1	3
E. Community facilities displaced	0	1
F. Remaining in 65 Ldn** Zone		
1. People	0	3,11
2. Schools	0	
3. Churches	0	1
4. Parks	0	

* All environmental impact figures for the Mueller expansion are ba upon the assumption of optimal land acquisition.

** Ldn, the notation for the Day-Night Sound Level Descriptor System the measure most frequently used to describe sound levels over a per of time. The Ldn level represents the average noise energy received given location during the time measured.

EXHIBIT 4

BE IT ENACTED BY THE LEGISLATURE
OF THE STATE OF TEXAS
June 16, 1989

SECTION 1. The Municipal Airport Act (Article 46d et seq. Vernon's Texas Civil Statutes) is amended by adding Section 16A to read as follows:

Sec. 16A NOISE ABATEMENT (a) Application. This section applies only to an airport owned by an incorporated city, town, or village that is a party to a grant agreement with the Federal Aviation Administration that has not been completely performed and that requires the city, town, or village to plan, design, and acquire land for a replacement airport.

(b) Definitions. In this section:

(1) "Public building" means a church, public or private hospital, or building owned or leased by a governmental entity, including a public school.

(2) "Replacement airport" means a new airport that is planned, designed, and constructed to replace a municipal airport operating on the effective date of this section.

(c) Noise Abatement Requirements. The governing body of an incorporated city, town, or village that owns a municipal airport to which this effective date of this section applies shall:

(1) not later than March 31, 1990, comply with the applicable provisions of the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. Sec. 2101 et seq);

(2) not later than December 31, 1990, provide adequate sound proofing and noise reduction devices for all public buildings within the 65 or higher average day night sound level contour as determined by the governing body of the city, town, or village in accordance with applicable Federal Aviation Administration Advisory Circulars; or

(3) not later than March 31, 1990, an incorporated city, town, or village affected by this Act shall award a contract for land acquisition services and complete a master plan for the replacement airport and, not later than December 31, 1996, provide the replacement airport.

(d) Noise Reduction. Notwithstanding Subsection (c)(2) of this section, the governing body of an incorporated city, town, or village that owns a municpal airport to which this section applies shall, not later than August 15, 1991, provide adequate soundproofing and noise reduction devices for all public schools that are within the 65 or higher average day-night sound level contour of the airport as determined by the governing body of the city, town, or village in accordance with applicable Federal Aviation Advisory Circulars and that are within one mile of the airport.

(e) Enforcement. Any affected person may bring suit in a court of competent jurisdiction to enforce this section, and the court may grant appropriate relief.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

EXHIBIT 5

THE PLANE TRUTH

Citizens for Airport Relocation (C.A.RE.)

MARCH 1990

BARNSTONE, COOKE, SOUTHWEST AIRLINES LEAD PARTISAN ASSAULT ON AIRPORT MOVE

The disruption of the land acquisition program for the Manor project by the surprise appearance of the "Bergstrom alternative" is no coincidence! Several economic and political agendas have converged in an effort to defeat the airport move. These include:

1. Southwest Airlines' determination to defeat the Manor project and to retain its dominance of the Austin passenger market.
2. Partisan agendas at the national and local levels aimed at local Democrats.
3. West Travis County developers' efforts to keep their shaky projects afloat by preventing roadways and growth in the less environmentally sensitive East side.
4. Two highly ambitious politicians on the dais eager to ingratiate themselves with these economic and political interests in order to promote their political rise.

Consider this remarkable sequence of events:

• On January 19, 1985 a non-binding proposition to move the airport was placed before the voters. The Austin advertising firm of GSD&M was heavily involved in the financing of the campaign to defeat the Move-It proposition. GSD&M's largest account was with Southwest Airlines. The founders of the firm gave $40,000 to People to Save Mueller Airport. Reporting requirements were violated to conceal these contributions and others from airlines so that the "Save Mueller" forces could masquerade as a "grassroots" organization opposing "greedy speculators" at Manor. The proposition was defeated by 748 votes.

• During the spring of 1987, those involved in the campaign to defeat the airport move formed another "grassroots" group called Send a Message to City Hall. SAMTCH spent over $63,000 in their petition drive to recall the entire city council that was preparing an airport bond vote for the fall. The largest contribution was again $40,000. The financial report indicated that it came from a single contributor, Bryan Hardeman. The petition was declared invalid, but challengers to pro-Move-It council members up for re-election used the signatures SAMTCH collected in the spring city council race.

[redacted] The same "grassroots" organization that in 1985 raised over $180,000 and outspent "well-heeled Manor Boosters," two years later could raise only $20,000 without the help of Southwest.

[redacted] the firm that the previous council had selected as project manager for the new Manor airport. TCAD was recommended by the aviation staff, had done the preliminary planning during 1986 and 1987 and was ready to fast-track the project. Rather than build on the work Cooke reopened the project manager issue which was debated for the next eight months before Sverdrup-Gibbsa was selected in January 1988.

• On February 2, 1989, the Council voted 5-2 for the "Shipman Resolution" to "fast-track" land acquisition when the funds for that phase of the project were identified. Cooke and Barnstone voted against the resolution.

• On February 14, 1989, Bill Reeves, project director for Sverdrup, wrote a memo assessing joint use of Bergstrom Air Force Base "as an alternative to the proposed Manor site for the New Austin Municipal Airport." The mere existence of this document at this time raises many questions in view of subsequent developments. Who requested it and why? Why was one of the first tasks assigned Sverdrup (fifteen months after the passage of a bond ordinance for money to build an airport at the Manor site) something totally outside the scope of services contract they had just negotiated with the city?

• On a March [redacted] Southwest Airlines, president Colleen [redacted] was asked by Councilmember Lee Cooke what Southwest Airlines would like to do when Austin's airport left Mueller and its replacement opened. Her reply was "My second choice would be to move to Bergstrom."

• On October 5, 1989 the city submitted a request [redacted] authorizing the City Council to approve purchase [redacted] and at the same time [redacted] "preferred" site. The resolution was based upon procedures the city had

EXHIBIT 6

followed in land acquisition projects since 1975. Barnstone and Cooke declared that the resolution violated the City charter. Councilmembers also opposed Gralla's action of [illegible] for private attorneys—including Southwest Airlines' Robert Bell Graydon—that were in conflict with the City Attorney, and unilaterally announced the resolution outside the city charter. After a two-month attack by Barnstone on the motives and ethics of pro-Move councilmembers, the issue was finally settled on December 7,1989 when the council adopted a land acquisition procedure similar to the one used for the convention center.

• A highly professional, well-orchestrated rumor campaign concerning the closing of Bergstrom began last fall. This campaign increased in intensity in December when local publications began to call for postponing land acquisition at Manor if Bergstrom's status was in doubt. On December 18, 1989 Barnstone wrote a memo to the mayor and council members calling for a "joint use incentive package" to keep Bergstrom and "resolve the municipal airport issue." Barnstone had repeatedly boasted that he had been speaking to "high-ranking generals" during this period. In the meantime, Pickle could find "no evidence" that the base was targeted for closure. A group fighting against the Manor site and a first term Austin city council member of no particular distinction had access to high ranking generals and knew more about the plans for closing a base than the congressman.

• On January 17, city officials learned that the cost to open the Manor airport in 1995 was below original estimates. Given existing FAA financial commitments, the rates and charges to airlines and other users would be well within industry standards and sufficient to support the revenue bonds. The mayor's reaction shocked Manor proponents because he had said all of his reluctance hinged on the uncertainty of the financing. Instead of using the lower costs to quiet his financial concerns, the mayor inexplicably insisted that "we may still have to look to the private sector to build the terminal."

• While Congressman Pickle was "laying to rest" rumors about the possible closing of Bergstrom, a Dallas TV station was quoting "anonymous sources" that Bergstrom would be on a list of bases studied for closure.

• From Washington, Cooke confirmed the listing of Bergstrom to be studied for closure by the Pentagon. He stunned the city by his remarks suggesting other uses for the base. "Bergstrom has a runway probably worth $80 million to $90 million that can land everything that can fly known to the free world." Without conferring with other city officials he unilaterally announced a "moratorium" on Manor land acquisitions. A mayor who was presumably reeling under the impact of news that his city could be in for a permanent loss of a base with a $530 million annual impact was already talking about plans for others uses. In a memo dictated from Washington, the mayor even had the presidence to announce a planning procedure that is at least a year premature: "I will ask the City Manager to prepare an analysis of the impact on Mueller Airport passenger traffic in the event of a reduction in force at either Bergstrom, Ft. Hood or both."

• On January 26th the mayor met with local officials, including the state legislative delegation, upon his return from Washington. Cooke asked Delco and others to amend the state law requiring Austin to hold to its timeline for the new airport or be faced with the cost of soundproofing dozens of public buildings around Mueller. "This is a very devestating issue for us, and this is a time for us all to be working together. I am hoping (the legislature) will be working with us . . . rather than trying to put more pressure on us."

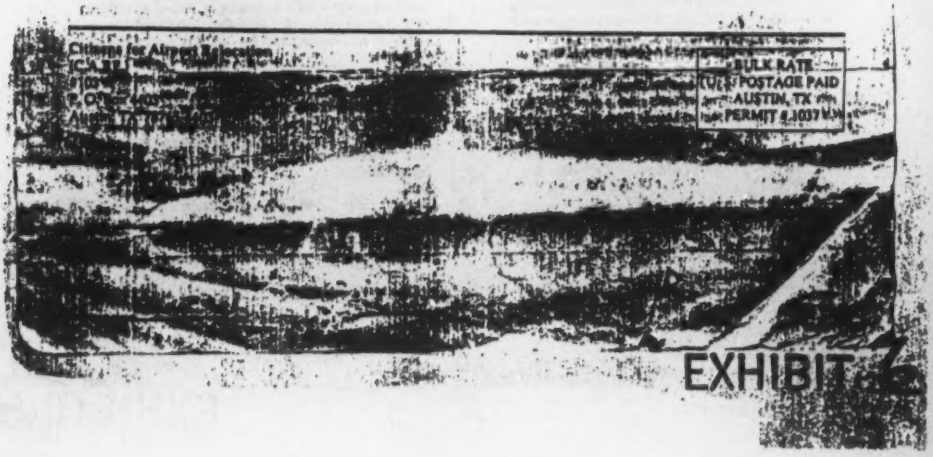
• On January 29, Secretary of Defense Cheney named the military bases the Pentagon is studying for closure. Nearly all of the bases are in the districts of Democratic congressmen. Democrats denounced the list as "out-and-out politics by the Bush administration."

• On January 31, Republican Senator Phil Gramm made the obligatory remarks that he would work to protect Texas from base closings, but wanted the Air Force to make a decision quickly on Bergstrom, "so Austin can use the base for a new airport."

• On February 1, Kelleher interjected himself into Austin politics by declaring Bergstrom "considerably less expensive and considerably more convenient" than Manor. Within a few days the *Dallas Morning News* ran an editorial touting Bergstrom as the new Austin airport.

• On February 2, Robert Montgomery of Southwest Airlines stated, "Our position is we can't make any further commitments or even spend any more money at the Manor site until we knew what's going to happen." Montgomery wanted a study of the impact closing Bergtrom would have on passenger traffic and the need for a new airport. Closing Bergstrom "may mean that maybe the demand will not necessitate a new airport for a longer period." Appealing to the statesman, he further urged Austinites to change the legislation requiring soundproofing.

• Republican Governor Bill Clements joined the partisan stampede to get Bergstrom closed and derail the Manor project. On February 28, the former deputy defense secretary under President Nixon met with his friend Secretary Cheney and advised closing the base since it would make a "beautiful airport" for Austin.



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Prepared Statement
of

STEPHEN J. CRAMER
Council Member
City of Minneapolis, Minnesota

on

REVIEW OF NATIONAL AIRCRAFT NOISE POLICY

before the
Subcommittee on Aviation
Committee on Public Works and Transportation

U.S. House of Representatives

October 4, 1990
Washington, D.C.

Past Presidents: Tom Bradley, Mayor, Los Angeles, California • **Ferd L. Harrison,** Mayor, Scotland Neck, North Carolina • **William H. Hudnut, III,** Mayor, Indianapolis, Indiana • **Jessie M. Rattley,** Mayor, Newport News, Virginia • **Cathy Reynolds,** Councilwoman-at-Large, Denver, Colorado • **John P. Rousakis,** Mayor, Savannah, Georgia • **Directors:** Jane Baker, Council Member, San Mateo, California • **Jean Baker,** Pro Tempore, Lubbock, Texas • **Carolyn Long Banks,** Councilmember, Atlanta, Georgia • **Kenneth G. Bueche,** Executive Director, Colorado Municipal League • **Margaret W. Carpenter,** Mayor, Thornton, Colorado • **Stephen T. Caseano,** Deputy Mayor, Manchester, Connecticut • **Joel Cogen,** Executive Director and General Counsel, Connecticut Conference of Municipalities • **Beulah Coughenour,** Councilor, Indianapolis, Indiana • **Joseph S. Daddona,** Mayor, Allentown, Pennsylvania • **Carol R. Day,** Councilor, Gorham, Maine • **Palmer A. DePaolo,** Mayor, Salt Lake City, Utah • **James M. Eleland,** Councilwoman, New York, New York • **Heather Flynn,** Assembly Member, Anchorage, Alaska • **Jules A. Garner, Jr.,** Executive Director, Pennsylvania League of Cities • **George D. Gould-sen,** Executive Director, Michigan Municipal League • **Fred Guerra,** Council Member, San Marcos, Texas • **Jack Hebner,** Council Member, Spokane, Washington • **Jan B. Jacobson,** Mayor, Murfreesboro, Tennessee • **Sharpe James,** Mayor, Newark, New Jersey • **Betty Ann Kane,** Council Member, Washington, DC • **Patricia A. Kilborne,** Mayor, Crestwood, Missouri • **Peter King,** Executive Director, League of Iowa Municipalities • **Mike B. Lindberg,** City Commissioner, Portland, Oregon • **Gary S. Mariensteen,** Executive Director, Missouri Municipal League • **Raul L. Martinez,** Mayor, Hialeah, Florida • **William A. Meyer,** Executive Director, Oklahoma Municipal League • **Adell Gilkes,** Mayor, Hamilton, Ohio • **David B. Orr,** Alderman, Chicago, Illinois • **David E. Reynolds,** Executive Director, North Carolina League of Municipalities • **Scott A. Swetland,** Councilor, Basque Farms, New Mexico • **Burton Stallwood,** Town Administrator, Lincoln, Rhode Island • **Nao Takasugi,** Mayor, Oxnard, California • **Richard C. Townsend,** Executive Director, League of Oregon Cities • **Avery C. Upchurch,** Mayor, Raleigh, North Carolina • **Thomas J. Volgy,** Mayor, Tucson, Arizona

Recycled Paper

Mr. Chairman and Members of the Subcommittee:

I am Stephen J. Cramer, Council Member of the City of Minneapolis, Minnesota, and Vice Chairman of the Energy, Environment and Natural Resources Steering Committee of the National League of Cities (NLC). As you know, the National League of Cities is an organization representing 16,000 cities and towns across the nation. That membership includes both local governmental airport proprietors operating airports receiving scheduled airline service as well as non-proprietor governments whose residents may experience unacceptable levels of aircraft noise. Both categories of local government, airport sponsors and non-sponsors, are pleased that this Subcommittee has chosen to focus on developing a National Aircraft Noise Policy for the 1990's.

My testimony also reflects the positions of the Metropolitan Aviation Sound Abatement Council (MASAC), a voluntary association of local governmental, civic, and aviation industry officials who make recommendations about various noise abatement options that could be adopted by the Metropolitan Airports Commission in the Twin Cities area. MASAC was formed in 1969 and has continuously provided a useful forum for development, consideration and decision on many aircraft noise mitigation programs that have substantially improved the noise situation near the Minneapolis/St. Paul International Airport.

As an introductory matter, Mr. Chairman, NLC is appreciative of your Subcommittee's efforts in H.R. 5170 to enact a Passenger Facility Charge (PFC) program to allow airport sponsors to undertake needed airfield development and noise mitigation programs when traditional funding is unavailable from local users and the Aviation Trust Fund. NLC adopted a policy position in support of PFCs this past summer and hopes the Senate Aviation Subcommittee will complete action on this important transportation infrastructure financing program before the end of the current Congress.

NLC's Municipal Policy (1990), as approved by its full membership earlier this year, considers aircraft noise as but one of many forms of pollution affecting urban and suburban areas. Air, water and noise pollution must be solved primarily by actions of the polluting entity, in this case the scheduled airlines, with the assistance and support of all levels of government.

NLC's Municipal Policy Statement and Secretary Skinner's Statement of National Transportation Policy (1990) are quite parallel as to aircraft noise abatement objectives. Both recognize the seriousness of the aircraft noise problem, the need to phase out the noisy (Stage 2) aircraft in the domestic fleet as quickly as practicable, and the necessity for involving communities that aren't airport sponsors in fashioning solutions to air transportation's environmental problems. Federal policy is not settled, however, on the relative rights and responsibilities of the different levels of government to assure noise reductions near major airports.

I. FEDERALISM ISSUES

A. Federal Government Policy Must Acknowledge the Right of Local Airport Sponsors to Adopt Tougher Noise Protections Than Federal Minimum Requirements When Needed

NLC believes that, although the Federal Government can and should adopt national minimum noise standards that airline aircraft must meet, local governments and airport operators must have the authority to impose more stringent or additional requirements on aircraft operations to achieve immediate relief from unacceptable aircraft noise exposure.

Mr. Chairman, the airlines are claiming that airport sponsors have enacted too many and too restrictive local noise regulations and that this "patchwork quilt" of local restrictions seriously impairs the carriers' ability to schedule their aircraft fleet efficiently. Under their approach, an airport sponsor would lose all Federal airport aid eligibility and the opportunity to impose a Passenger Facility Charge unless the FAA reviewed and subsequently approved all local restrictions under new statutory criteria.

NLC disagrees with this view. First, local aircraft noise restrictions can be successfully challenged in Federal court by the FAA if those restrictions burden interstate commerce, interfere with FAA's own authority for aviation safety and airspace utilization, or discriminate between classes of airport users. We must assume that FAA has been applying its law and that those local noise restrictions FAA hasn't challenged in court don't violate the above legal tests.

Second, the continued ability of local airport sponsors to impose site-specific use restrictions on aircraft operations is the best way for the nation to achieve more airport capacity. Unless an airport sponsor can assure neighboring communities that it can and will control the noise around its runways, those communities will resist efforts to increase or even maintain the airport's current capacity.

We urge Congress not to enable FAA administratively to overrule site-specific noise protections unless the Federal Government itself is willing to "solve" all those local problems comprehensively with its programs and its staff. The Federal Government would have to be politically accountable for the total aircraft noise problem if FAA could overrule the local airport sponsor's approaches to its local situation.

B. Federal Government Should Recognize the Rights of Local Governments Under State Law to Control Zoning and Land Uses Around Airports

NLC recognizes that when the Federal Government and the airport sponsor have assured that the quietest possible fleet is serving the airport and that aircraft are being operated along flight tracks that best minimize noise, the state and local governments that control land uses near the airport must take actions to help assure the continued compatibility of that land with airport operations. As will be discussed, NLC is working with FAA to develop guidance to all parties on those issues.

Mr. Chairman, land use compatibility can't be achieved by zoning where the airport is already surrounded by high-density residential development. It is ignorant for the aviation industry to propose in such circumstances that the airport's neighboring communities lose their eligibility for all Federal transportation funds if they can't assure land use compatibility in built-up areas near airports.

II. NLC RECOMMENDATIONS FOR FEDERAL ACTIONS

NLC recommends five specific actions that the Federal Government should take without delay that are appropriate to its role in a new National Aviation Noise Policy.

A. Federal Government Should Set Schedule for Industry Phase-out of Noisy (Stage 2) Aircraft

FAA should establish under its existing statutory authority a phaseout schedule, with interim deadlines, for domestic airlines to retire their existing fleet of Stage 2 aircraft (or quiet them) as soon as an all-Stage 3 fleet is achievable. While individual airport sponsors could set such deadlines individually, and in fact a number of sponsors have needed to do so, it would be most advantageous for the FAA to establish such a "national deadline" so that all airport communities could be assured of the benefits of Stage 3 aircraft as early as possible.

We urge FAA to publish a Notice of Proposed Rulemaking without delay proposing a definite schedule for the transition to an all-Stage 3 fleet by the

end of 1999. Let the carriers in response make their best case for a longer phase-in period and let FAA determine the deadline on the merits of the arguments and data presented.

This would be the single most important step FAA could take to convince skeptics that the Federal Government was acting to improve the environment around major airports.

B. Federal Government Should Deny Entry into U.S. Service of Europe's Discarded Fleet of Stage 2 Aircraft

The U.S. airlines' "non-addition proposal" would in fact allow them to purchase older Stage 2 aircraft from Europe, where their future use is restricted, and to import them for operation here for a half-decade without being upgraded to Stage 3 noise standards. Why should the FAA by its inaction allow aircraft noise to get worse at major U.S. airports for years to come? Keeping out additional noisy jets from foreign sources is an appropriate environmental task for the Federal Government.

C. Federal Government Should Accept Financial Liability for Payment of Damages Resulting from Aviation Noise

NLC continues to disagree with the Supreme Court's holding in the Griggs case that the local airport proprietor, rather than the Federal Government or the airlines, should be financially liable for the consequences of excessive levels of aircraft noise. The Federal Government certificates the aircraft for safety and noise purposes, establishes flight paths for aircraft operation, and prohibits virtually all actions that other levels of government can

effectively take to mitigate the noise impacts that result from aircraft operations.

Congress should consider legislation that transfers liability from local airport sponsors to the Federal Government for takings of property (inverse condemnation) resulting from the operations of aircraft that are in strict conformity with Federal aviation safety and noise regulations.

D. Federal Government Should Provide Trust Fund Grants to Local Communities to Participate in Airport Sponsor's Part 150 Noise Compatibility Programs

Under current law, only the airport sponsor of a Part 150 Noise Compatibility Planning project may recover its costs for that process through the FAA's Airport Improvement Program (AIP). Other local governments whose jurisdictions are impacted by airport operations must participate in the Part 150 process with their own funds.

Congress should consider allowing noise-affected communities near airports also to be eligible for Federal airport planning funds. The access to professional technical expertise that Federal funding would enable could improve the overall quality of the Part 150 process.

E. FAA Should Publish Guidance Materials to Assist City/Airport Planners on Land Use Compatibility Options

The National League of Cities has proposed and the FAA has agreed to co-sponsor a seminar later this fall on airport land use compatibility planning methods. We are appreciative of FAA's cooperation in this project. Also

supported by the National Organization to Insure a Sound-protected Environment (N.O.I.S.E.), this two-day seminar will allow city and airport planners and consultants the opportunity to discuss what land use planning techniques have worked and have not worked to mitigate aircraft noise problems. Attendees will hear both about past efforts to keep land around airports compatible with aircraft operations and, the tougher task, to improve the situation where the areas around urban airports have already been developed for residential or other non-compatible uses. MASAC hopes to be invited to share its expertise in this seminar.

We hope this cooperative two-day seminar will educate airport and city planners to each other's world and responsibilities under state law and will generate information that FAA might publish and distribute to other interested communities around the nation. Again, NLC members recognize that there must be balanced solutions to the problems of aircraft noise and that land use compatibility planning is an essential element for the environmental protection of the population.

CONCLUSIONS

Mr. Chairman, the National League of Cities urges Congress and the Administration to develop a National Aviation Noise Policy that is consistent with the principles of Federalism and which, when implemented, will rapidly improve the noise environment around U.S. airports. In our view, the burden

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-- as yet unmet -- is on the airlines to demonstrate that their desire for unfettered flexibility in scheduling their limited numbers of quieter Stage 3 aircraft into U.S. airports is a value that is superior to the continuing efforts of communities to protect their citizens from excessive noise through reasonable local regulations.

Finally, we are fearful of any Federal administrative preemption process that could lessen the ability of airport sponsoring governments to negotiate site-specific solutions to noise problems with their neighboring municipalities.

Thank you. I will be pleased to answer any questions you may have.

OCTOBER 4, 1990

STATEMENT BY ASSEMBLYWOMAN ELIZABETH A. CONNELLY REGARDING EXCESSIVE AIRCRAFT NOISE AT ARLINGTON, STATEN ISLAND, N.Y. ATTRIBUTABLE TO AIR TRAFFIC AT NEWARK INTERNATIONAL AIRPORT

Arlington and Mariners Harbor, the well-populated communities on the northwest corner of Staten Island exist today as if they were at the end of the runways at Newark International Airport. Newark International is in New Jersey; Arlington and Mariners Harbor are in New York.

But, like most forms of pollution -- and excessive noise assaults the environment as disastrously as air and water pollution -- state boundaries remain invisible. Similarly, actions to correct these environmental assaults can not cross the artificial boundaries of states. The federal government must take a hand in both regulation and providing measures of long awaited -- and well deserved -- relief.

In dealing with aircraft noise, the Federal Aviation Administration clearly has the authority to act to provide some measure of relief to thousands of beleaguered residents of Staten Island. Actually, the FAA must act, <u>again</u>, to correct the results of its previous attempts to reduce aircraft noise.

Earlier this year, the FAA modified its departure plan, hoping to send climbing aircraft along a path that paralleled the industrial areas that line the coasts of New Jersey and Staten Island. I hope that plan looked good on paper, because, in practice, it made the problem worse.

The communities involved are beset every hour of every

day with the roar of jet engines, the deafening drone that intensifies steadily until people in routine conversation cannot hear the others' words.

The FAA's records will show that I, and others, have communicated with its officials to seek relief, to try to understand the dynamics of the situation, and perhaps suggest alternatives of our own. Yet the FAA remains steadfast that it can do no more without shifting the noise problem to another residential community.

Unlike many other residential areas that grew in the shadow of an airport, Arlington and Mariners Harbor are in a reversed position. Newark International Airport grew up in an area where Arlington and Mariners Harbor -- both historic communities with roots that go back to the Tall Ships -- had existed as home community to thousands.

And, there's enough New York State pride in me to suggest that since we receive none of the benefits the airport brings to New Jersey, we should not have to participate in the solution to aircraft noise that pollutes Jersey's residential areas.

New Yorkers derive few, if any, job opportunities associated with the airport. We benefit from none of the taxes

generated, none of the revenue, none of the economic development potential. We get the noise, however. There's something desperately wrong.

Since I learned that the New Jersey congressional delegation was taking a united approach to cure the aircraft noise problem at New Jersey communities, I began to develop a fear that New Jersey's solution would result in an intensified problem for Staten Island. After all, there has been no talk of cutting back air traffic at Newark to alleviate noise. I suspect New Jersey's congressional members would want the air traffic diverted away from populated New Jersey. That's the same as saying diverted to Staten Island.

The long-term solution is translated into quieter air craft, but that's truly long-term.

The immediate solution is not so hard to attain, in my judgement. There are literally thousands of acres of undeveloped and commercially or industrially developed lands in the area surrounding Newark International Airport. And, it is these spaces over which the most heavily-travelled flight paths must be developed.

I understand the arguments that these non-residential spaces are not always in the optimum flight paths, but the

question of "optimum" is a relative term -- what is most desirable for an airliner to attain its proper heading is not necessarily most desirable for the people living below the flight path.

With the FAA at a virtual standstill in solving these conditions. we have turned now to Congress to provide understanding, compassion...and a reasonable solution. Where the FAA deals with headings, degress and minutes, our hope is that Congress will deal with the more human qualities -- the same qualities that are assaulted every hour of every day when you live in the flight paths of Newark International Airport.

TESTIMONY OF THE ARLINGTON COMMUNITY ASSOCIATION OF STATEN ISLAND, NEW YORK

ON AIRCRAFT NOISE

BEFORE THE SUBCOMMITTEE ON AVIATION
OF THE COMMITTEE ON PUBLIC WORKS & TRANSPORTATION

OCTOBER 4, 1990

Jean Crisson 28 Martineau Street
Staten Island,N.Y. 10303 (718) 448-1007

ARLINGTON COMMUNITY ASSOC.,INC.

Subcommittee On Aviation:

My name is Jean Crisson, I am Corresponding Secretary of the Arlington Community Assoc.,Inc. and a resident of Arlington, S.I. for 36 years. I'm here to protest the conditions we have to live with..frustration, anxiety and total disgust, due to the fact that planes departing from Newark Airport in New Jersey fly over our homes so low, that children 3 years old recognize the LOGO on them. These planes have been clocked between 18 - 20 seconds apart. One morning recently from 9:00 a.m. to 10:15, 51 planes passed, LOW AND LOUD... We hear them approach, fly overhead, and then we have to endure the after-sound. They disrupt our lives..We have no rest. I'm talking about 1:30 a.m. 3:30 a.m. 6:00 a.m.(which is the start of a day of planes) You lie in bed anticipating a plane to arrive and if it will make it. There are buildings 13 stories high in the area of the departure route. People actually scream at times when they see these "giants in the sky" approaching. Many senior citizens live in these high risers..

I have been recording planes since April, 1990. Back in 1985 planes were complained about,due to the noise they generated, but since Jan. 1990, there is no comparison. I am submitting correspondence from FAA to Congressman Guy Molinari dated July 10, 1985, wherein it is stated by Joseph M. Del Balzo, Director, "FAA shares your concern..agrees..requested Port Authority to seek IMMEDIATE AND LONG TERM SOLUTION TO S.I. UNTENABLE NOISE SITUATION." The FAA states the Port Authority is the agency with primary responsibility for noise resulting from aviation activity of its Newark facility. Also stated is the fact that they (FAA) assures revisions will receive this agency's full support. Well, Subcommittee members,...Remember this letter was dated 1985.. IMMEDIATE in my dictionary means "INSTANT" Five years have passed, maybe FAA writes its own dictionary....This is 1990. How IMMEDIATE IS IMMEDIATE??? Certainly not since January 1990. Our problem has only escalated. Don't you agree??

Exhibit ("A")

Residents in New Jersey, 30 - 40 miles away from Newark Airport - complained to their political leaders. As a result of their complaints, FAA made flight adjustments. This is evidenced in a booklet titled"1989 AIRPORT HIGHLIGHTS" published by the Port Authority. Note Page #7..."Intended to relieve noise levels.... Cranford, Colonia, Scotch Plains...In January 1990, FAA fanned departures going westbound from a point 5 - 10 miles South of Newark. Continuing complaints to Port Authority and FAA raise questions as to the effectiveness of these changes. Well Sub-committee, this 5 - 10 miles in my estimation IS certainly over our areas. In their words, THEY DOUBT the effectiveness, we I don't doubt it..I KNOW IT, as does the thousands of other residents in the northwest section of Staten Island KNOW IT FOR A FACT. Tape recordings have been sent to local politicians, the mayor and governor of New York and FAA of the horrendous noise these planes create. Gov. Cuomo is concerned about the decible - of noise created by car radios and car horns. Construction work has to stop on weekends, to afford individuals peace and quiet..WHAT ABOUT OUR PEACE OF MIND?? NONE... Is this fair?? certainly not. Many residents have health related problems that they feel have been aggrevated by the airplanes ie: high blood pressure, digestive problems, ear problems, constant headaches, most of all, anxiety and stress. People young and old are affected. Children trying to study in schools in our areas and also at home, Adults trying to study for job advancement and even a good night sleep, forget it...

EXHIBIT "B"

EXHIBIT "C"

EXHIBIT "D"

I don't know how to end this speech, so much to say...
We don't have the answers. We didn't create the problems.
We hear suggestions of quieter aircraft, that with less polluting problems. I want to see results in my lifetime.
I urge your committee to use all the power entrusted to you to FORCE and I emphasize FORCE the FAA to do something NOW so in my time I will see results of this hearing.

Thank you, Good Luck....

Jean Crisson,

Jean Crisson

Arlington Terrace apartments

Ms. Janet Perina
65 Holland Ave. Apt 10J
Staten Island, N.Y., N.Y. 10303

RE: AIRPLANE NOISE

I moved to Arlington Terrace with my little son a year and a half ago. He is now three. Since we have been there the nights that the planes fly over us his sleep is disturbed and he wakes up screaming from fear of the loud noise. This condition has been bad enough so that his sleep patterns seem to be permanently disrupted. I cannot say that he is particularly sensitive because I have been wakened from them too. My sister-in-law, who lives here too and who has three small children conplains of the same problem with them. This condition is affecting the health of all the children. Sometimes the planes fly so low that we are afraid they will hit the buildings. There must be some way for them to gain sufficient altitude before they come over us to at least lessen this impact.

There are times that I find my car, which is parked in an open lot, covered with black, sooty flecks and/or with an oily substance that can only be attributed to the planes and their noxious fumes and fuels. If this is all over the cars, what is in our lungs? The government wages an all out campaign about people smoking but allows this condition to persist year after year. Or are we who are in the path of the planes just some statistical data, the sacrificial goats to a major industry?

Sincerely,

Janet Perina

Janet Perina

Ms. Jackie Remsen
Arlington Terrace
55 Holland Ave. Apt. 11C
Staten Island, N.Y., N.Y. 10303

RE: AIRPLANE NOISE FROM NEWARK AIRPORT

During the five years I was President of the Arlington Terrace Tenant's Association I received endless complaints from all our tenants about the excessive noise and the fear of the low flying planes leaving and returning to Newark Airport. It is my personal opinion that the FAA has shown nothing but dilatory and delaying tactics in refusing to deal with this chronic problem. I do not have the technical knowledge regarding airplane routings to criticize their present policies, except to say that regardless of the routing certainly there should be a method by which these planes should gain sufficient altitude so as not to be felt to be a menace to people living in thirteen story high-rise buildings. I cannot fault complaints that I have had, because I, too, have been up in the early hours of the morning, particularly, when it seemed to me the planes were so low that the buildings themselves were in danger. There is no excuse for this.

The revenues from Newark Airport, such as they are, flow into the coffers of the state of New Jersey, not the state of New York. Yet we are asked to share the noise and pollution and make no complaint about it. This is a Federal matter in which the Federal government has been highly remiss. The bottom line is that it is a New Jersey airport that causes this problem not a New York airport, yet we are supposed to pay the penalty for complaints from New Jersey citizens about the noise inflicted on them, by having planes leaving their terminals routed over our airspace. I am sure that the last suggestion they would accede to is to close down the airport and develop some other alternative. However, unless the FAA and others can develop some methods for reducing the noise and pollution from these planes, the suffering public may well demand such extreme measures both here and elsewhere.

The airline industry, as well as the Federal and State Governments have the responsibility to enliven the research and development programs that might bring new solutions to cope with these problems. Men sitting in boardrooms and in legislatures pontificate "It's not practical. It costs to much.." will not have, forever, their own way. It is well to serve notice that the American voter, the victim of so many stupidities who is now faced with not only the horrendous crisis of the S&L bailout but with a possible war who are very likely, in the near future, to demand an accountiblity. And it will be the relatively small refusals of their legislators and leaders to give credance to their complaints that will trigger the matter.

Sincerely

Jackie Remsen

Donald J. Gavrity
28 Bailey Place
Staten Island,
New York 10303
718-442-5884

Subcommittee on Aviation
Members of the Subcommittee

I was at the opening of Newark Airport in 1941 in Newark, N.J. It was a very big event. I still feel it's a very big event and is necessary for the area. It started out with planes driven by propellers. There was a little noise then, but there weren't too many flights. The years progressed and so did the flights. We are now in the stage of very few to almost none of the prop jobs.

The jets came on and the situation changes. They became noisier and bigger. We know of the incident in 1953 when one crashed in Elizabeth, N.J. We sympathized with the residents. The route was then changed to go over the Arthur Kill river. It was then we shared the noise with Elizabeth N.J. However, every once in a while one would stray over the Island and we got the noise and vibration. We also had a visit with some airplane parts in the 1970's. Motor parts were dropped next to a house on Richmond Terrace, approximately 25 feet from a residential home. Other parts were found in an area we call Downey's, about 200 feet from homes on Holland Ave. More parts were found on Procter & Gamble's property at the south gate on Western Ave. After that they went back over the Arthur Kill river. This didn't last too long as in the Mid 80's, they went International and runway 22 was opened to accommodate the increase in flights. While I stand in my yard, I cansee them take off and then make a left to go directly over my home. All they have to do is not make such a sharp left turn and go back over the Arthur Kill river.

We had meetings with Elected officials, flight controllers, Port Authority, even had a sound truck there from the Dept. of Environmental Protection taking readings at 9:00 A.M. , the noise on the chart went way above 100 Decibals. However, from that flight until 2:00 P.M., not another flight took off in this direction. The sky was clear except for 5 prop jobs and one jet coasting to either LaGuardia or Kennedy airports.

We are asking for an immediate change over the Arthur Kill river with no straying of the flights, and no Environmental Impact Study. Mayor Dinkins asked for a flight change away from the Forest Hill Tennis matches and got it without an Environmental Impact Study from LaGuardia Airport route.

It was also in the papers that Senators Bradley and Lautenberg had their planes re-routed without a study. The flights over our area greatly increased in January of this year. They are all taking the sharper turn now.

Years ago when a flight came over, we called Newark. They would tell us, "get the number from under the wings. They got so many calls, that the number was put on the tail in small print. We can still identify the planes by their Logos and colors.

I would just like to repeat, that we know the flights are necessary, just make less of the left turn and go over the Arthur Kill River. This way Elizabeth, N.J. and Staten Island will share in the least amount of noise and pollution from the engines of the jets. Thank you.

Donald J. Gavrity
Pres. of the Arlington Community
Association Inc.
(718) 448-(5884) 9-29-90

Arlington Terrace apartments

Mrs. Genevieve Roxland
55 Holland Ave. Apt. 9E
Staten Island, N.Y., N.Y. 10303

RE: AIRPLANE NOISE FROM NEWARK AIRPORT

I have been an officer of both the Tenant's Association for over five years,and the Senior Club for over ten years. The complaints about the airplane noise as they fly over Mariner's Harbor have been unending. Many of us are elderly, fragile and housebound. Our sleep is easily disturbed. We depend on the television for our entertainment and our telephones for communication with our family and friends. There are times when
the planes are flying some particular paths when it is impossible either to hear or communicate with others. At one point the planes were coming over so fast and low that it was impossible because of the incredible noise to put an emergency 911 call through without delay. Their dispatcher simply couldn't hear over the constant background noise. Admittedly, this only happened once to my knowledge, but once is too often for a heart attack victim.

Our television transmission is continually interrupted. Both the audio and video are affected. Television is our only regular source of entertainment. Senior citizens are restricted, by their health and vulnerability to criminal activity, as well as by financial restrictions, to their homes, particularly in the evenings. In the world of the nuclear family we are alone, and some of us abandoned. Our world is our little coterie of friends, some worse off than we are, our little senior club, and our TV. And the pernicious airplanes.

We would request that this committee use it's power to at least mitigate the circumstances that cause our disturbed sleep, our fright in the night, when lights from some planes have literally shown through our windows, and when the noise from planes flying so low give us even greater reason, then we already have, to meditate upon our approaching God.

Sincerely,
Genevieve Roxland
Genevieve Roxland

46 Housman Avenue
Staten Island, NY 10303-2702 (718) 442-1017
September 29, 1990

Senate Sub-Committee Hearing
Washington, D.C.
October 4, 1990

To Whom It May Concern:

"End the horrendous, exceptionally stressful noise and life-threatening pollution in New Jersey's suburbs. Send Newark Airport's planes over the North Shore of Staten Island!"

We, who, on this day have left their jobs and families and travelled since 4:30 A.M., represent long-term homeowners from Arlington, Mariners' Harbor, Elm Park, Southgate and other affected Staten Island communities. WE need RELIEF.

WHY are NEW YORK STATE residents continually and escalatingly subjected to this abuse by another state NO LESS ?!!!

As I write this letter, I have to close the windows and shut the back door to muffle the constant roar of planes.

CONSTANT means one perminute.

ROARS means decibels in excess of 100 - up to 120.

Now it's 10 A.M. and a plane's noise was louder than the radio playing in the kitchen of my, at least 120 year old, home. I represent the fourth generation.

When I'm on the phone to others in my group, we can hear the roars over each other's phone! Literally telephone, radio and television are interrupted continuously.

Some neighbors can read the numbers on the planes.

They've taken videos of them passing directly over their heads.

Subject: Newark Airports routes over Staten Island neighborhoods
Senate Sub-Committee Hearing on 10/4/90

What effect does the tremendous noise and fuel have upon our environment? The emissions from these innumerable planes must be staggering.

The noise stops conversations.

How are the fruits and vegetables we grow and consume affected? Mine are strangely spotted with unusual growths.

These flight patterns pass not only over residential neighborhoods but also OVER/VERY NEAR schools. Are the students and personnel adversely affected?

PLEASE HAVE NEW JERSEY'S NEWARK AIRPORT RE-ROUTE THEIR PLANES OVER THE RIVER AND INDUSTRIAL WATERFRONTS!

In addition, should any of them fail, they, hopefully, won't crash into schools and homes.

The North Shore of Staten Island has another name. It is Cancer Alley. This is due to the exorbitant and documented incidences of cancer here.

New Jersey's airport now generates even more life-threatening practices.

I am appalled at the total lack of regard for the American families who live here.

Sincerely,

Patricia E. Hannan

Patricia E. Hannan
Elm Park Civic

cc: Borough President Guy V. Molinari

Donald Crisson 28 Martineau Street (718) 448-1007
Staten Island, N.Y. 10303

SPEAKING FOR COMMODORE: Arthur Crowl

MARINERS HARBOR YACHT CLUB
3387 Richmond Terrace
Staten Island N.Y. 10303 (718) 442-5843

Mariners Harbor Yacht Club has been in existence since 1903 and has a membership of over 100. Many senior citizens are involved.

The purpose of this organization is to provide boating facilities, promote safety & courtesy afloat, and good fellowship associated with yachting.

We hold many meeting on our premises, which is located at the Kill van Kull/Arthur Kill waterway. We are approximately 2 miles South of Newark Airport.
Departing planes from Newark fly directly overhead and the continuous exhaust on take-off is fully visible at the club. The noise is deafening...Meetings come to a complete halt when the planes fly over. Boats have been sighted with oil droppings on them.
We cannot enjoy our summer, winter, spring or fall. Socials held there are impossible. We cannot enjoy a family picnic there..

Between the water pollution, especially with the recent oil spills in our waters and the NOISE AND AIR POLLUTION from Newark Airplanes, WE DON'T STAND A CHANCE.....

Thank you,

Donald Crisson
Donald Crisson

Authorized to attend and speak..... Arthur Crowl

Arthur Crowl
Commodore, MHYC

Arlington Community Association

September 30.1990

To Whom I Hope Will Be Concerned:

It's the same story every day "Did you see that plane fly over at 7:50 last night?"

"See it? I have skid marks on my roof to prove it."

That is a daily conversation held by those of us that live on the northwest corner of Staten Island.

How can planes flying that low over our homes be safe? The hazzards it creates are varied. My childrens' health is affected by their constant presence. Their hearing will soon be impaired by the rumbling engines of these constant, low flying planes. The pollution engines emit every time one flies over--- what is that doing to our lungs? My children don't sleep. My 10 month old wakes every time an airplane flies over and my 3 year old won't sleep in his own bed because he is frightened of both the noise and the lights these planes bring each time one flies over.

I am only one concerned parent. Concerned not only about my children but about myself too. The stress caused by a plane that appears it's not going to make it over the 13 story Arlington Terrace Apartments is about all I can take. That compounded with interrupted sleep does not make for a good parent.

The day a disaster strikes is the day we will see action. Why wait for that day? Let's avoid loss of lives now. We need help and we need it fast. Staten Island takes enough from its local government so we are looking higher for help. The F.A.A. apparently is not willing to help. They just spend money conducting so called "studies." Well, we don't need another study. The study is here, today, with each of us taking precious time out of our lives to make this plea.

We are not stopping now. Our fight will only get stronger. This should be a problem for New Jersey not Staten Island. WhAt did they have that we don't? A more powerful local government? A large enough community affected? or a "friend"?

So to move the planes to fly over Staten Island to save a New Jersey life now means threatening a Staten Islander or even my own life. I would rather the risk be taken at their expense. It's their airport, their revenue, let them take the worry!!!

Sincerely,

[illegible]

OLD PLACE CIVIC ASSOCIATION
432 Northfield Avenue
Staten Island, New York, 10303

Speaker: Mrs. Bea Mahoney
President, Old Place Civic Association
Community Board # 1 - Area Committee

STATEN ISLAND IS NOT PART OF NEW JERSEY !! WE ALL KNOW THAT AN AIRPORT GENERATES FINANCIAL GAIN, JOB OPPORTUNITIES AND TOURIST DOLLARS FOR THE STATE IN WHICH IT IS LOCATED. THE RESIDENTS OF NEW JERSEY ACCEPTED THESE BENEFITS WITH GREAT ENTHUSIAM BUT ONLY ON A TAKE NOT GIVE BASIS. THE ENTIRE OPERATION OF AN AIRPORT ENTAILS FLYING LOW ON LANDING AND TAKE OFF BUT THEY DO NOT WANT THESE PLANES COMING OVER THEIR ROOFTOPS. THEY PROTESTED AND - LOW AND BEHOLD - WHERE ELSE TO DUMP THE ONE UNFAVORABLE ASPECT OF THEIR PRIDE AND JOY !! STATEN ISLAND, OF COURSE !! THEY DON'T CARE ABOUT STATEN ISLANDERS. THEY KNOW THAT NEW YORK DOESN'T CARE ABOUT STATEN ISLANDERS - WE ARE WIDELY KNOWN AS THE "FORGOTTEN BOROUGH" USED MAINLY FOR "DUMPING ON" PURPOSES. HOW CONVENIENT FOR NEW JERSEY !!

THEY HAVE THE FAA AND THE PORT AUTHORITY ON THEIR SIDE. THEY SAY STATEN ISLANDERS DON'T HAVE A CHANCE - THEY CAN RANT AND RAVE ALL THEY WANT BUT THEY DON'T HAVE THE CLOUT WE DO !! WELL, "READ MY LIPS" ALL YOU GREEDY, SELFISH, UNCONSCIONABLE, INHUMAN GUYS AND GALS OUT THERE !! IF OUR GOVERNMENT OFFICIALS ARE UNABLE TO CORRECT THIS INJUSTICE, BE PREPARED FOR A CLOSE ENCOUNTER WITH HUMAN BEINGS LIVING OUT HERE ON STATEN ISLAND. WE ARE A FORMIDABLE FOE WHO, WHEN "MAD AS HELL", ARE NOT GOING TO TAKE IT ANYMORE !!

Continued on Page 2.

(Continued)
Speaker: Mrs. Bea Mahoney
President, Old Place Civic Association
Comunity Board # 1 - Area Committee

WHEN WE HAVE TO SHOUT IN OUR HOMES TO BE HEARD, TURN VOLUME UP ON RADIO AND TV TO LISTEN. WHEN NORMAL TELEPHONE CONVERSATIONS ARE AFFECTED AND SLEEP DISRUPTED. WHEN JET FUEL AIR POLLUTION DESTROYS OUR GARDENS AND IS HAZARDOUS TO OUR HEALTH, WHEN ALL THIS IS THRUST UPON US BY INVADERS, IT IS TIME TO FIGHT FOR OUR RIGHTS !!

THANK YOU.

Bea Mahoney

You cannot talk on the telephone, sit down and watch T.V. or listen to a radio and any attempt to sit shuttered up in my own home is like sitting on a bomb shelter during a shelling. SHUTTERED UP is the correct definition of how I am forced to live due to these aircrafts. SOMETHING IS WRONG.

I cannot sit in my backyard and invite guests because any attempt to converse becomes totally frustrating. This is not my definition of the "American Dream". You have to close the doors and windows at all times of the day and night, I must pull my drapes at night because my son is frightened by the beaming headlights of these aircraft. AND THE FAA DOES NOT CARE. I have heard all the excuses most, if not all, are weak and pitiful and I'm hear to tell you that they are unacceptable. I am tired of hearing how "the wind blows the plane over your home", we all know that the wind does not blow these planes anywhere they don't want to go.They stopped flying over the Tennis tournament when Mayor Dinkins requested that the FAA have them stop. Change was possible for that, well this is my life and that of my family and there can be a change made for our health and safety.

The "expert" engineers told us that the pilots have only a small screening instrument thru which to determine jusst where they are. My suggestion---Look out Your Window. that is not a river, that is my house defenseless against your cringing vibrations, and your droppage of fuel which I and my family are forced to breathe. What pitiful excuse will the FAA make when one of thes jumbo jets fall out of the sky, destroying my home, my life and god knows how many of my neighbors? We need someone who cares, someone to get up and do something NOW. It cannot be done by one person. The FAA is suppose to protect us. We need to bring this abusive situatin to an amicable conclusion there are alternatives and the FAA is aware of everyone of them. We need to make them care....

Jean Callon

Gladys Shapass
F.A.T.E.
c/o Arlington Community
Civic Association
428 Lisk Avenue
Staten Island, N.Y.

October 4, 1990

Five years ago, my husband and I were finally able to achieve the "American Dream", that of being a homeowner. After much deliberation, we purchased our first home on the Northshore of Staten Island, N.Y. We chose ~~Staten~~ State Island for a number of reasons, one of them being its close proximity to the New Jersey Turnpike making it easier for my husband to get to our place of business in Mid-town Manhattan. Well it seems that so many of the things that made us choose the Northshore of Staten Island have become the things that make living here uncomfortable to say the least.

We are constantly assaulted by they unfavorable air quality due to the chemical and oil refineries just across the river located in Bayonne New Jersey. We have spent years inhaling odors and when we complain to the Environmental Control Board, they never seem to be able to find the source-from their offices, they never will. The smells, we try to live with by closing our doors and windows and pray that it won't affect us or our children. The main problem that befalls us now and closing our eyes, nose, windows or doors doesn't seem to help, and that is the ever increasing sounds of jet aircraft taking off from Newark airport right over our homes.

The steady constant noise drowns our conversations, assaults our eardrums, terrifies our children, prevents us from falling asleep and awakens us prematurely.

We have complained constantly and are always told "a study is underway". I recall reading last year that the FAA was going to move radiobeacons so that the airplanes would take off a few degrees to the west over the waterways rather than houses--I guess that did not happen.

The FAA seems to have deaf ears when it comes to the cries of the citizens of Staten Island for a little coooperation to improve our standards of living. This form of pollution is that which we are suffering from now. We don't need more studies, someone should read those studies that have already been done. If planes can be rerouted a few degrees so that they do not disturb the Forest Hills Tennis Tournament as it happened recently, then someone should have the intelligence and the ability to reposition take-off paths over industrial areas and waterways rather than over our homes.

It is time for us to consider what the affects of noise does not only do to our comfort, but its direct and indirect affect which it has on and physical and mental health. While I am not one who wishes to curtail progress, we must carefully weigh its affects presently and in the future for all mankind. If we can require the auto industry to reduce emission, we can certainly do the same to the airline industry. Planes must be made quieter and less polluting. We must develop ways to prevent the increase in our usage of air transportation to harm our environment. We have built our airports near to our cities for convenience but we have not taken the comfort of our inhabitants into consideration. What might have been nearly a nuisance in the earlier days of aviation when planes were smaller, has now become a critical health hazard with more and larger planes flying over our neighborhoods. I use the New Jersey Turnpike daily and I drive past miles of industrial areas that is both north and south of Newark Airport, but rather than direct the landing and take-off paths over these areas and disturb these factories and oil refineries, the planes have been directed over large populated areas over Staten Island.

We have been promised study after study but the situation

worsens. We cannot turn a deaf ear to our pleas while we are becoming deafened by the constant thundering of jets overhead.

Gladys Shapass

Arlington Community assoc. Inc.

AIRPLANE NOISE AND FUEL POLLUTION ON STATEN ISLAND

I would like to thank the assembled audience for permitting us the time to vocalize our concerns. I truly hope and believe that a viable solution can be worked out.

I live in a section of Staten Island called Mariners Harbor which is on the Northwest part of Staten Island, about ten miles south-east of Newark Airport. Planes taking off from Newark Airport fly very low over my house during the day and night. The sound is so loud that my house rattles. My family and I have often been awakened from a sound sleep. Sometimes the planes even sound like explosions or earthquakes.

Once I had my elderly grandmother staying with me for a couple of weeks. She became so traumatized by the sound of the planes one night that I had to call an ambulance. They reminded her of World War II when England was being bombed by planes.

It is very difficult to watch television. Sometimes the planes fly over us one after another, every minute or so. We must put the sound up very high to enjoy a television program.

Verbal conversations are extremely difficult. Telephone calls are the worst problem. I often make or receive long distance telephone calls. I have to repeatedly ask the person on the line to wait until after a plane has passed overhead or repeat what they had said because I absolutely cannot hear them. This is causing my callers and I higher telephone bills.

My daughter attends a school nearby. The roar of the airplanes repeatedly interrupts her classes. I know that at home we frequently do not hear each other because of the noise.

The fuel exhaust from the airplanes is another major concern. We have often seen the vapor from the airplane exhaust coming out of the planes and drifting down on us. Yes, you can actually see it! My house and car are always covered with a film that is extremely difficult to get off. I don't know what these fumes are doing to us, but I do know that they aren't healthy.

The attitude of the FAA has made us even more upset. They first said they had to do a study before they could help us. Then we found out that these planes were rerouted over us without any study. Now they simply refuse to do anything at all.

I personally would welcome a study. I would like to know what the noise levels are. I would like to know the effects of the fuel pollution on us. I would love to know why they cannot make a slight change in the takeoff route so the planes fly over the Kill Van Kull and the industrial areas of New Jersey. I would like to know why they must turn and come out of their way to fly over our neighborhood. I would hope the FAA would learn that they are wasting costly fuel doing this.

Perhaps the FAA has a plan. We just don't know about it yet. They're probably planning to wait until we all go deaf. Then we won't hear the planes anymore.

That is a very real possibility, however. We aren't that ignorant that we don't know that we are being exposed to very high levels of sound, up to 120 decibels, and that these levels are physicianly damaging. We also know that this noise can cause other physical damage besides hearing loss. The strain of trying to hear over this noise is affecting our nerves also.

As a mother, my greatest concern is for my children. I fear that they will suffer permanent physical damage. If I could, I would move away from Staten Island. We truly are the forgotten borough.

Thank you for your attention,

Margaret Kimble

Margaret Kimble (718) 494-1054

323 South Avenue
Staten Island, N. Y. 10303

Grenadier Realty Corp
F.A.T.E.
c/o Arlington Community
Civic Association
125 Holland Avenue
Staten Island N.Y.

Attached please find a copy of a letter which was sent to Mr. Peterson of the FAA. explaining my concern regarding the (low, loud and constant) air traffic passing overhead from Newark.
As I cannot attend this meeting, I submit this letter for consideration. Your **immediate attention to a solution is urgently requested.**

Elizabeth A. Oates

Sincerely,

Elizabeth A. Oates
Property Manager

*Grenadier Realty Corp.
125 Holland Avenue
Staten Island, New York 10303
718-448-3110

Arlington Terrace

September 27, 1990

Mr. Daniel Petersen
FAA
Regional Administration
Fitzgerald Federal Building
JFK Airport

Dear Mr. Petersen:

I represent the community known as Arlington Terrace. We're located on Holland Ave, Staten Island, N.Y.

This is a development consisting of five hundred and thirty six units which include four hi-rise buildings. Many of our tenants especially our seniors have expressed their concerns about the low flying airplanes. I myself have an office on the complex and can verify that the noise emanating from the planes is deafening. And quite frankly, frightening.

The proximity of these planes is so close that you actually believe that one can touch them or worst yet, that they will collide with one of our buildings. On any given day for hours on end these planes fly over the complex in such numbers that any telephone conversation is literally impossible to have.

These planes must be rerouted. Arlington Terrace is appealing to you for assistance.

Very truly yours,

Elizabeth A. Oates

EAO:cb

Elizabeth A. Oates
Property Manager

Thomas Pastore
44 Benjamin Place
Staten Island, N.Y. 10303
(718)-273-3066

Affiliations - Vice President-
Arlington Community Association -
Member of Community Board No.1

RE: F.A.A. and Commercial Airlines from
Newark Airport Flying over Staten Island.

TO: Honorable Members of Congress:

I've come here today in the hope that I, along with other Staten Islanders, will be able to petition this committees assistance in returning our Neighborhoods back to normalcy. Staten Island has and continues to be invaded. Invaded, by the thunderous roar of commercial airlines, as they fly over our homes, climbing to their destiny, and leaving us their exhaust fumes and the reverberating thunder-like noise -- noise to loud to shut-out or hide from.

I recall labor day weekend -- it was Sunday Morning 4:00 o'clock in the morning. I was, abruptly and rudely awaken by a low-flying airliner whose engines roar made my whole home vibrate and rattle as if we just had a collision with an unknown object. Laying there, unable to sleep, I reflected on this summer just ended. I recalled conversations with fellow Staten Islanders. Neighbors who spoke of the constant irritation of the continuing noise bombarding our communities. Unable to have normal phone conversations, unable to view our televisions without raising the volume, unable to hear our children calling from our backyards, unable to have a normal nights sleep -- these are part of our now unfortunate lifestyle. Cancelled barbecues, restless nights, and anxious weekends looking for places of peace and quiet to escape to...these were part of our summer (just past) menu.

For many Staten Islander it was truly our "summer of discontent". Please be aware that we have always had to contend with a degree of noise from Newark Airport, but since January of this year the air traffic over Staten Island has multiplied many time over. Take the month of July - 1990 for example: Seven Thousand, one hundred and ninety-three (7,193) planes left from the runways 22L and 22R which allow air traffic to invade the residential communities of Staten Island.

As Staten Islanders, we are well aware of our rights as citizens, we could not remain docile and allow this intrusion (into our lives) to continue. Thinking that the Federal Aviation Administration (F.A.A.) was our ally, we invited them to our June 14th, 1990 Arlington Community Association meeting. They listened to our complaints with what appeared to be a sincere attentiveness. Their (F.A.A.) argument was that the wind currents sometimes made the airplanes shift over the residential areas of Staten Island. That statement is void

of truth and substance. Our film footage will show that almost all the planes regardless of the weather, fly over our homes, day and night. The F.A.A. representative attending that June 14th, 1990 meeting tried to explain to us their newly implemented departure program. This plan, effective on January 11, 1990, known as the Newark Three Standard Instrument Departure (S.I.D.) program was to insure that all planes would fly over the Arthur Kill waterway, initial climbout to gain altitude. That in fact, is not and never has been what is actually occurring. These aircraft are gaining altitude over our homes, when they are the loudest and expending the most fuel exhaust. An extremely hazardous situation for the innocent Staten islanders below. At the end of that meeting an F.A.A. representative promised our Association President, Mr. Don Gavrity that he would contact him within (3) three weeks to inform him of what they can do to shift these planes. No contact was ever made and no discussions within the agency ever took place. I believe this to be true, because our next meeting, on July 20th, 1990 at Congresswoman Susan Molinari's office revealed that no internal discussions, on this serious matter, took place.

Once again, promises were made to review our problem and possibly move the planes over at least (5) five degrees so they would not impact on our neighborhoods. I personally was promised by their Special Projects Manager, Mr. William Marx, that he would contact me about any decisions. We showed them a Department of Environmental Graph test, which revealed noise levels of up to one hundred (100) decibels, which is dangerously high. We showed them video footage of the low flying aircraft. We presented audio tapes of the noise and left petitions of fellow Staten Islanders, angry with this continuing problem. They listened, promised to deliberate within their agency, and contact us again.

Once again no contact from the F.A.A. It is my opinion that again, they violated the trust granted them by our congresswoman office, our civic association, and all Staten Islanders who thought the F.A.A. was an agency they could trust. Be aware members of congress, that insulting us was not enough for this agency oblivious to people with real problems. Because of continued reques. from our Borough President, Mr. Molinari, the F.A.A. Regional Director, Daniel J. Peterson, promised that they would use state of the art simulation techniques to see if changes in flight patterns could be made. At least that's what Mr. Peterson said to the newspapers. I challenge them to show me and this esteemed committee the results of those so called "state of art" test. I believe those test were never conducted and that they never had intentions of doing so. I believe this to be true, because (after many weeks) I finally spoke with Mr. William Marx (special projects manager) to find out if they were going to shift the planes, to a new heading and what the simulation tests determined. Mr. Marx, being the "Special Projects Manager", one would assume this simulation tests would fall under his responsibility. Mr. Marx initially (when questioned by me) didn't even know about any simulation, being done. He finally said, "well we will be considering doing those test, but not now". Mr. Marx also stated that they decided the planes would not be changed from their present pattern. Two (2) weeks later Mr. Peterson's letter to our congresswoman confirmed this decision. Up-to-date no one from the F.A. A. has shown us any documents, tests, review, or any other factors that made them

come to the unprofessional decision. All the facts, video and audio tapes, decibel graphs, complaints from citizens, complaints from our Borough President and our congresswoman, all has begin ignored by the regional office of the F.A.A.

I can't speak for our Borough President nor our Honorable Congresswoman, but I am furious at the way the F.A.A. has treated our elected officials and the citizens of Staten Island. Nothing the F.A.A. has done will deter us from getting the needed relief we need to return our communities back to one of quality and tranquility. We will stand together with our Borough President and our Congresswoman and with the member of this esteemed committee to receive a just conclusion to the serious and hazardous problem. I stand here now and on behalf of the residents of Arlington, Staten Island, I respectively request your assistance and support for the problem we have present to you here today.

It appears as if the (F.A.A.) Federal Aviation Administration flies its own plane, a plane called Autonomy. It also appears as if they are lost in the clouds with no direction. Only you, the Honorable Members of Congress can give the proper course to take, bring them back to earth, and keep them grounded, so they can properly address the needs and concerns of the citizenry.

I thank you one, all for granting us the opportunity to make our presentation.

Sincerely,

Thomas Pastore

THOMAS PASTORE

WHAT IS A HOME? A HOME IS A REFUGE, A PLACE ONE GOES TO TO ESCAPE THE STRESSES AND STRAINS OF EVERYDAY LIFE. WHAT COMES INTO YOUR MIND WHEN YOU THINK OF HOME? A SANCTUARY, A PLACE WHERE ONE IS COMFORTABLE AND RELAXED, A PLACE TO ENJOY PEACE AND COMFORT.

LET ME WELCOME YOU TO MY HOME. IT IS A RUNWAY, AN AIR TRAFFIC LANE FOR PLANES DEPARTING FROM NEWARK INTERNATIONAL AIRPORT. WHEN I THINK OF MY HOME, I WONDER HOW BAD ARE THE PLANES GOING TO BE TODAY?, HOW FREQUENTLY WILL THEY BE FLYING OVER MY HOME TODAY?, FOR HOW MANY HOURS WILL I BE BOMBARDED WITH AIRPLANE NOISE POLLUTION TODAY? THEN I THINK OF A CONTINGENCY PLAN SUCH AS, WHERE CAN I GO TODAY TO ESCAPE THE INCREDIBLE NOISE THAT WILL SHATTER THE PEACE AND QUIET OF MY HOME?

IS THIS THE WAY IN WHICH PEOPLE ARE EXPECTED TO LIVE DAY IN AND DAY OUT?

I AM AWAKENED EVERY DAY AT 6:30 A.M. BY AIRPLANE NOISE, AND WHEN I RETIRE FOR THE EVENING, THE PLANES ARE STILL FLYING OVER MY HOME. THE NOISE LASTS UNTIL 12:30 A.M. AND AT TIMES BEYOND. THE INTERVAL BETWEEN PLANES IS 20 TO 30 SECONDS - YES, SECONDS NOT MINUTES! AS THE NOISE FROM ONE PLANE FADES, THE NOISE OF THE NEXT PLANE BEGINS. THE SOUND IS SO DEAFENING THAT ANY AND ALL CONVERSATION MUST BE HALTED; ONE CANNOT HEAR ONE'S TELEVISION, STEREO, OR RADIO; ONE CANNOT CONCENTRATE WHEN STUDYING OR READING A BOOK; ONE CANNOT FALL ASLEEP. YET, IF ONE IS LUCKY AND DOES FALL ASLEEP, ONE IS ABRUPTLY AWAKENED BY AIRPLANE NOISE.

THE NOISE IS CONSTANT AND CONTINUAL. THERE IS NO RESPITE FROM THE TENSION, ANGER, FRUSTRATION, AND OUTRAGE THE AIRPLANE NOISE ENGENDERS. EVERYONE NEEDS RELIEF FROM STRESS AND STRAIN, THAT IS A FACT. YET, RELIEF CANNOT BE REALIZED WHEN ONE'S HOME IS PART AND PARCEL OF THE AIR TRAFFIC ROUTE EMANATING FROM NEWARK.

CAN YOU IMAGINE LIVING WITH 15 CONTINUOUS DAYS OF AIRPLANE NOISE THAT LASTS A MINIMUM OF 18 HOURS AT 20 SECOND INTERVALS PER DAY? YET, THAT IS WHAT WE RESIDENTS OF STATEN ISLAND HAVE TO DEAL WITH ON A CONSTANT BASIS. YOU WOULD FEEL OUTRAGE, ANGER, AND FRUSTATION ALSO.

COMMUNITY GROUPS FROM STATEN ISLAND HAVE PRESENTED THE AIRPLANE NOISE POLLUTION ISSUE TO VARIOUS REPRESENTATIVES OF THE F.A.A. OVER THE PAST MONTHS. THE F.A.A. HAS TRIVIALIZED THIS PROBLEM THAT CONSTANTLY PLAGUES STATEN ISLAND NEIGHBORHOODS BY SAYING: 1) AIRPLANES ARE NOT SUPPOSED TO FLY OVER POPULATED AREAS; 2) THE PLANES FLY SOUTH (OVER THE NEIGHBORHOODS OF STATEN ISLAND) ONLY 45% OF THE TIME; AND, FINALLY, THE F.A.A. HAS LITERALLY STATED THAT THEY ARE NOT GOING TO CHANGE THE AIR TRAFFIC PATTERNS OVER STATEN ISLAND COMMUNITIES.

AS ONE OF THE MANY AFFECTED RESIDENTS OF STATEN ISLAND, I HAVE COME HERE TODAY, IN GOOD FAITH, TO ASK YOU, THE MEMBERS OF THIS COMMITTEE, TO RESOLVE THIS DANGEROUS AND HARMFULT HEALTH AND ENVIRONMENTAL ISSUE IMMEDIATELY.

WE WANT NO MORE RESEARCH, NO MORE STUDIES, NO MORE EXCUSES FROM THE F.A.A. WE WANT AND DESERVE IMMEDIATE ACTION TO CORRECT THIS INTEROLABLE LIVING CONDITION.

MY FAMILY REFUSES TO COMPROMISE THIER QUALITY OF LIFE ANYMORE! MY FAMILY REFUSES TO HAVE THEIR SANCTUARY AND THEIR PRIVACY INVADED BY AIRPLANE NOISE POLLUTION ANYMORE! WE HAVE THE RIGHT TO PEACE AND QUIET, COMFORT AND RELAXATION IN OUR HOME.

Vicki + Richard Shields

VICKI & RICHARD SHIELDS
223 A Pond Way
Staten Island, NY 10303 (718) 761- 3772

TESTIMONY OF THOMAS E. GREER, A.A.E.
DIRECTOR, AIRPORT SERVICES
BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY

BEFORE THE

AVIATION SUBCOMMITTEE OF THE HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE

THE HONORABLE JAMES L. OBERSTAR, CHAIRMAN

OCTOBER 4, 1990

Mr. Chairman, my name is Tom Greer. I am Director of Airport Services for the Burbank-Glendale-Pasadena Airport and I am pleased to offer the following remarks regarding the Passenger Facility Charge and a National Noise Policy. First of all let me thank you for giving me this opportunity to appear before you and to commend the Chairman and the Committee for your willingness to address such challenging issues which are laden with potential political consequences, yet which are so essential to the survival of the national transportation system.

At present under your leadership and that of Senator Ford both houses have presented proposals for a PFC, and the Senate version advocates a National Noise Policy. Burbank Airport is firmly convinced that both are essential and will enable much needed investment in our country's aviation infrastructure. While there are differences between the two proposals, Burbank Airport wishes

to commend the leadership you have shown in the considerable movement taking place in Congress towards this goal. Throughout the country, airports are approaching critical periods in their attempt to meet burgeoning demand. The PFC's and a National Noise Policy could make the difference between success and failure.

At Burbank, for example, the Airport Authority has long struggled to replace the current passenger terminal built over 60 years ago. When the Airport Authority assumed ownership in 1978, the Federal Aviation Administration urged the Authority to replace the terminal as soon as practicable, and the agency has continued to press the Authority to attain this objective.

The primary impediment to the project thus far has been the unavailability of an appropriate site. The Airport Authority has recently entered into negotiations to acquire up to 110 acres as a possible terminal site. We have also begun the preparation of an Environmental Impact Report.

At this point, it is clear that some federal assistance must be considered in order to enable the purchase of this land. After the land purchase, however, the Airport Authority will be hard-pressed to build the new passenger terminal without the availability of a PFC.

It is obvious that the safety and capacity enhancements that will

accompany a new terminal development will be more than worth the investment. The availability of this parcel is a one-time window of opportunity, much like the acquisition of the airport itself in 1978. If the airport is unable to acquire it, the land will be sold to other parties for other uses. The result would compound an already severely impacted capacity dilemma in the Southern California market area.

It is hard to imagine a greater return for national aviation dollars than the return on investing in airport-adjacent land at Burbank. With this land the Airport Authority can address a major safety issue that has for too long gone unresolved, and at the same time will lay the foundation for much-needed capacity enhancements critical to the overall balance of air commerce in Southern California and the Western Pacific Region.

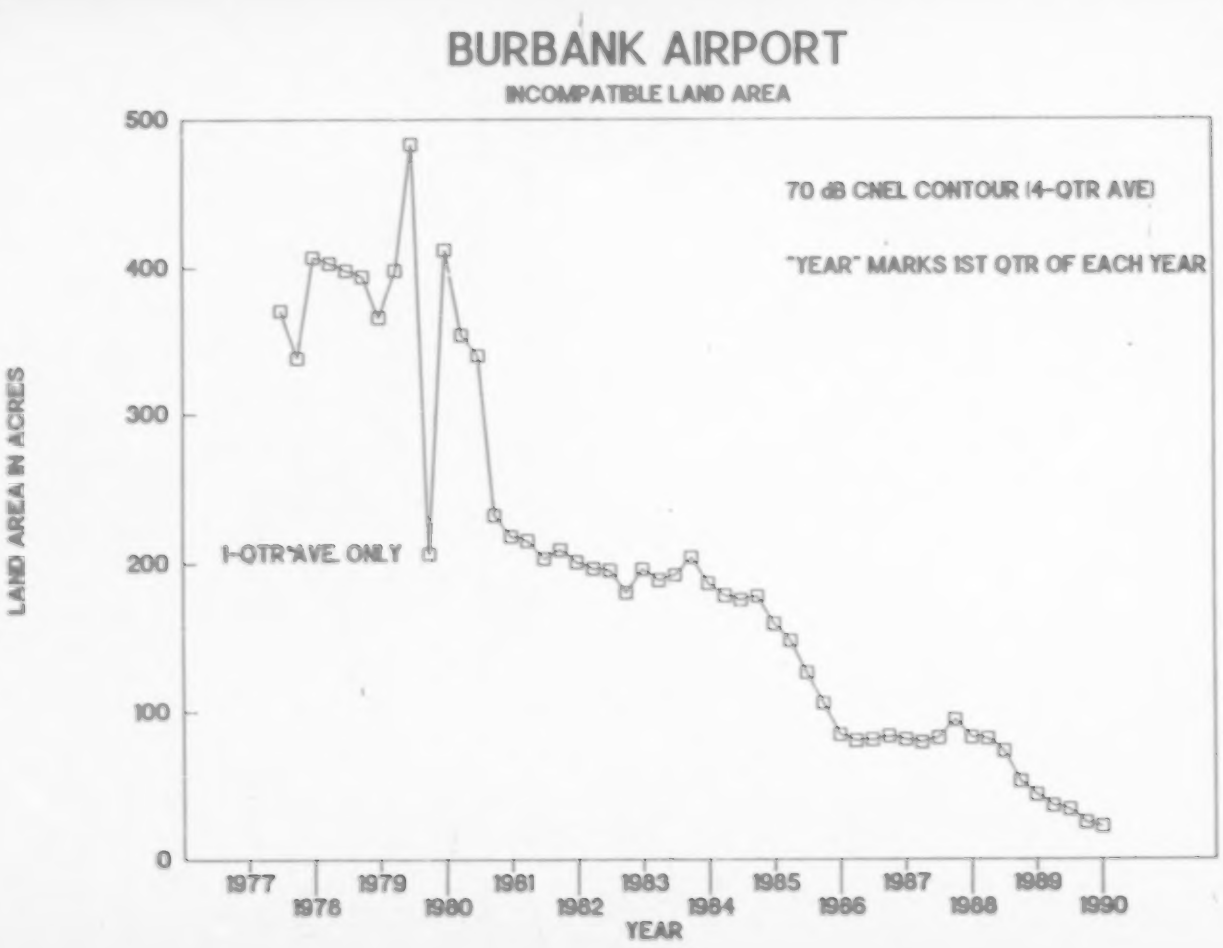
Now let's turn to the issue of a National Noise Policy. Burbank Airport is well aware of the conflicts brought about by local interests which tend to place their concerns about aircraft noise ahead of the benefits that they and the nation as a whole receive from the smooth flow of air commerce. Burbank Airport is also living proof that something can be done to address noise problems without placing an undue burden on interstate commerce. Furthermore, concerns about legal liability over noise may be overblown if our airport's experience is any indication.

We therefore believe a National Noise Policy, implemented over a reasonable time period, can and will lead to significant benefits for the noise-affected public while preserving the ability for air commerce to survive and prosper.

A noise policy based on the complete phase-in of Stage 3 aircraft offers a promising approach. That is exactly the program undertaken by Burbank Airport during the past decade, and the results are there for all to see. (chart attached)

When Burbank Airport came under public ownership in 1978, there were over 403 acres of residential land around the airport impacted by average noise levels of 70 CNEL, (the Community Noise Equivalency Level (CNEL) standard observed by the State of California). At that time, 70 CNEL was the standard for determining whether residential areas were compatible with airport noise or not. There were 34,000 air carrier operations that year, which translates into an average of 47 departures and 47 landings per day.

The grant agreement with the Federal Aviation Administration which helped to fund the purchase of the airport stipulated that the noise impact area at the time of purchase could not increase in the future. To my knowledge, Burbank is the only airport in the nation with such a firm limitation in its grant agreement. Our record has exceeded anyone's expectations.


BURBANK AIRPORT
INCOMPATIBLE LAND AREA
70 dB CNEL CONTOUR (4-QTR AVE)
"YEAR" MARKS 1ST QTR OF EACH YEAR
1-QTR AVE. ONLY
LAND AREA IN ACRES
500
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1985
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1990
YEAR

The most recent noise monitoring report submitted by the airport to the California Department of Transportation shows a residential impact area of 18.5 acres at the 70 decibel CNEL standard. This is a 95% reduction of the impact area which was in place in 1978. There were over 23,000 air carrier operations in the first half of 1990, which translates into an average of 63 departures and 63 landings per day.

This noteworthy progress has been due primarily to a unique cooperative program between the Airport Authority and the airlines serving Burbank. Beginning in 1982, under regulations promulgated by the Authority, the airlines began phasing in Stage 3 aircraft at Burbank. By April 1987, the fleet was 100% Stage 3 and has remained so to the present.

The value of this program to the surrounding community is substantial. Not only have the cumulative noise levels measured by the CNEL metric shrunk dramatically, but the single event interruptions of each flight are significantly less intrusive. And based on feedback through the airport's noise complaint phone lines and professional scientific surveys, these improvements are making a difference to the public.

In 1985, for example, there were 2,155 phone calls logged on the airport's noise complaint phone lines, made by 445 individual callers. By 1985, the fleet was 50% Stage 3, and the 70 dB CNEL

residential impact area was 160 acres. In 1989, there were only 318 calls logged on the noise complaint lines, a reduction of 85.5% from 1985 levels. I must add that the 318 calls were from 185 individual callers and that seven individuals made 25% of the calls. Please note that 1.5 million people live in the San Fernando Valley.

A professional survey of people living near the airport preliminary to our FAR Part 150 Study, performed by Arnold Steinberg and Associates in 1985, showed that 26% of the sample cited "peace and quiet" as the quality they liked most about their neighborhood. When they were asked what they liked least, 12 percent cited airport noise. In 1989, the Los Angeles Times Poll, at its own initiative, repeated the survey. This time 39% of the sample cited "peace and quiet" as the quality they liked most about their neighborhood, and only 3% cited airport noise as the quality they liked least. The improvements over the 1985 survey and phone complaint record correspond precisely with the transition to Stage 3 aircraft.

The noise issue at Burbank has also had its day in court. The cases of 24 representative properties whose owners were suing the airport for personal injury (nuisance) and diminution of property value (inverse condemnation) were tried in 1988. The court awarded no damages to the plaintiffs. The Court of Appeal upheld the verdict in May of this year, and the California Supreme Court has refused to hear any further appeal. An important point in

the Burbank Stage 3 program is that we have achieved good results without restricting the number of aircraft operations. Thus there is still unused capacity available for any carrier that wants it.

To summarize, thanks in large part to the use of Stage 3 aircraft at Burbank, measurable noise has decreased dramatically; noise complaints via telephone and surveys have decreased dramatically; and financial liability for Burbank Airport due to property damage or personal injury has virtually disappeared -- all while preserving the ability to meet increased demand. The only thing needed now is for the "Burbank experience" to be folded into a National Policy so that local officials can be assured that they can pursue the goal of meeting the capacity needs of their community without the everpresent fear of costly litigation, brought about by special interest groups.

I do not mean to suggest that the noise problem goes away once Stage 3 aircraft are on the scene. The noise problem experienced by individuals living near airports is a very subjective phenomenon, and all airports face a permanent obligation to address the public's concerns. I do mean to suggest, however, that Stage 3 will get the aviation community close to where it needs to be in terms of National Policy -- where all parties to the debate can be seen as doing what can reasonably be expected of them to serve the collective interests of the nation.

However, we must be very clear and emphatic that Stage 3 airplanes can still be heard. We cannot convey the impression to the public that Stage 3 airplanes are silent. This only leads to an expectation that once Stage 3 comes about they will no longer hear airplane noise. This false expectation continues to surface as the major complaint from many residents saying the airport "lied" to them about the benefits of Stage 3 aircraft.

There is an area of concern in the Senate proposal which calls for reexamination of existing noise rules. Burbank Airport has an approved FAR Part 150 Study, and the noise maps accepted by the Federal Aviation Administration as part of that study are based on the continued use of Stage 3 aircraft. Any attempt to change that fundamental assumption would vastly diminish the benefits the airport and the public received upon completing that study. I am sure you can appreciate the public relations consequences of shifting course after Stage 3 aircraft have been a 100% fact of life at Burbank for well over three years.

I hope these remarks will aid you in your deliberations. I believe that our experience reveals solid evidence that there is meaningful progress to be made. Burbank Airport looks forward to being a part of that progress and enhancing vitally needed capacity in Southern California.

In summary, the Burbank-Glendale-Pasadena Airport Authority supports the concept of a National Noise Policy, keeping in mind

the impact on local communities and the progress that has already been made in addressing the noise issue. It also sees the provision allowing a Passenger Facility Charge, along with conventional funding sources, as the only solutions to meeting the challenge of providing the facilities needed to meet the capacity demands today and tommorrow.

I wish to reemphasize our appreciation of your willingness to tackle these complex issues. We are confident the ground we have broken at Burbank will reveal useful applications to the foundation of a National Policy. Thank you, Mr. Chairman.

Submit for Record

Testimony AIRPORT HEARINGS OCT. 4, 1990
Room 2167 Raburn House Office Building Rm 2167

ERNEST C. MICHAELSON (Chairman of the BWI Neighbors Committee 10/86 to 9/90) Speaking for Timber Ridge and Voicing concerns of the neighborhoods South and South West of the BWI Airport.

I. STATEMENT OF ISSUES:

1. STAGE III AIRCRAFT

Neighbors at BWI notice a major improvement in SEL noise levels when a stage III aircraft passes overhead compared to a Stage II. These planes are quieter and higher when they take off overhead. Some Stage III planes have a high pitched whine during landing that causes a roaring pain in the head and loss of balance for people with Menier's Desease. It also causes discomfort for people with sensitive ears. Stage III planes are better but not perfect for noise control.

WE NEED LEGISLATION TO ENCOURAGE A FASTER TURNOVER TO STAGE III AIRCRAFT. (One answer would be 10 to 100 times the landing fee for stage II compared to Stage III aircraft.)

KLM PLANES

The KLM stage II boeing 747's are by far the noisest of them all. This is the plane that will be flying over Glen Burnie during East operations if the BWI RW 10/28 is extended from 9500 to 10500 feet. KLM Stage II planes must be banned for this take off procedure. It will cause painfull noise to Glen Burnie Residents during an East take off and a West landing.

WE NEED LEGISLATION TO KEEP KLM STAGE II 747 AIRCRAFT OUT OF THE UNITED STATES.

TURNS 1/2 MILE FROM TAKE OFF RUNWAY

Stage II planes cause painful 95 to 105 dB Noise levels when they turn 1/2 mile from the end of the take off runway. BWI Neighbors was instrumental in stopping the 1/2 mile left turn over Glen Burnie and moving it to 1.5 mile before turns. The East Operations 1/2 mile right turn off 15R is now causing painfull noise SW of the airport. The noise level is only 80 to 90 dB when they turn 1.5 miles from the end of the runway.

WE NEED LEGISLATION TO PREVENT STAGE II PLANES FROM TURNING LESS THAN 1.5 MILES FROM THE END OF THE RUNWAY.

2. STATE AND LOCAL REGULATIONS

State and County governments must have the right to pass legislation to prevent excessive harm to the local jurisdictions.

The regulations should include:

A. Building Zoning in the noise zones.
B. Flight paths that cause painful 95+ noise levels over neighborhoods.
C. Reasonable curfews that do not prevent cargo operations or late flights from the West Coast.
D. Higher landing fees for noisy aircraft.

3. PROCEDURES FOR LAW SUITS

In my personal opinion law suits should be limited and restricted. Once lawyers get involved the merit-of-the-issue is gone and the who-can-make-the-most-money-is-in.

IV. ECONOMICS OF ITEMS 1,2,3 ABOVE

1. I believe that is not possible to require all stage III aircraft for use in the USA or any major airport at this time when the airlines are already in financial trouble. If we loose the airline industry to foreign competition, as we have our manufacturing industries, this county will be in deep trouble.

What we can legislate is a phase in of Stage III over a reasonable time frame that produces all stage III by 1996 or 1998. The industry has stage III retrofit for Stage II planes. This should be required in phases for completion by 1996.

The legislation requested above to limit the flight paths of Stage II and Noisy KLM planes will not put economic hardship in the airline industry.

2. State and Local regulations need to consider the economic impact. The State can not afford to put the airlines or BWI Airport out of business.

3. Unreasonable law suits can put major costs to taxpayers and to the airline industry. These need to be carefully regulated to prevent abuse.

V. FEDERAL AIRSPACE

Federal Air space needs to be regulated but not allow military or other airports to insist on air space that puts an undo burdon on the neighboring airport.

CASE IN POINT:

Andrews airport insists on airspace so close to BWI that it serioulsy limits the BWI flight flexibility. So far Planes that turn right off of 15R must turn one half mile from the end of the runway. This causes painful 95+dB noise levels as mentioned above. If this air space could be retrenched by one mile then this 1/2 mile turn could be extended to 1.5 miles and reduce the noise by one half for people under the flight paths.

VI. FEDERAL PROGRAMS

Federal Programs can be good. However we need to watch that they do not become a boondoggle and waste taxpayer money as many programs have in the past.

BEFORE THE

United States House of Representatives

Subcommittee on Aviation

Committee on Public Works and Transportation

Hearings on Federal Noise Policies
October 4, 1990

Testimony of the County of Orange, California

JAN MITTERMEIER
AIRPORT MANAGER
JOHN WAYNE AIRPORT (SNA)
ORANGE COUNTY, CALIFORNIA

Introduction

The County of Orange, California, appreciates the opportunity to submit its views to the subcommittee on the important issues affecting the future of commercial aviation in this country, which are inherent both in the aircraft noise and airport capacity controversies.

Orange County is the proprietor of John Wayne Airport, Orange County (SNA), which has served regularly scheduled commercial aviation since 1967. The object of our testimony today is twofold: First, we want to make certain that this subcommittee has an accurate understanding of the nature of the County's development and regulation of John Wayne Airport. We believe that JWA is a significant aviation success story, and an example of how local airport proprietors can provide significant capacity enhancements in a politically hostile environment, and in an environmentally responsible manner.

Second, the County has been at the forefront of addressing airport/community incompatibilities for two decades, and we want to offer the subcommittee the benefit of that experience.

The pending legislation to allow airport proprietors to impose Passenger Facility Charges (H.R. 5170) represents, we believe, a constructive step towards addressing the airport infrastructure and capacity shortfalls which threaten many areas of this country, including Southern California, which we know to be of specific concern to this committee. However, recent efforts to couple this capacity enhancing authority with a simultaneous legislative preemption of the discretion of airport proprietors to regulate the use of their airports based upon noise considerations might well make the PFC legislation essentially meaningless in many communities. In particular, we believe that Senator Ford's recently introduced S. 3094 is a major assault on the country's ability during the next decade to address effectively airport capacity enhancement.

Summary

Based upon our experience, we believe that there are certain basic points which must be made:

1. By its very nature, commercial aviation in this country frequently involves diverse and competing interests, many of which express valid and legitimate concerns from their individual perspectives, and each of which must be recognized and offered a balanced representation in decisions relating to airport development and use.

2. The need to address specific airport noise problems in individual communities, and the need, at least in certain areas of the country, to enhance airport capacity and infrastructure, are not inherently incompatible. Indeed, it may well be that the future ability of local governments to implement capacity enhancing airport projects depends upon the continued ability of the airport proprietor to offer affected local communities some environmental concessions and some defined certainty regarding future growth of operations, and future environmental impact levels.

3. In fact, the County is concerned that if federal legislation is passed in the form of some of the currently proposed "noise policies," local opposition to airport capacity improvements will only *intensify*, further blocking airport development at the local level. If noise affected local communities cannot have some input into the airport development and operations process, they will respond by opposing all such projects as a matter of doctrine. In many states, including California, state environmental and land use laws and processes will be used by airport opponents to prevent further development of airport infrastructure.

4. Orange County represents one example - but by no means the only example - of a substantial expansion of airport infrastructure and capacity *with the cooperation of the local noise affected community* which resulted principally from the County's ability to commit to regulation of airport development and use in a manner which afforded the local community some certainty regarding the future noise levels in their communities.

5. Since the Congress passed the Airline Deregulation Act of 1978, Orange County has been able successfully to create significant capacity enhancements at John Wayne Airport, despite a long history of organized and well funded opposition to any growth in service levels at JWA, precisely because it was able to exercise its proprietary discretion to regulate airport noise:

> Three weeks ago, we opened for service a new air carrier passenger terminal twelve times the size of the old passenger terminal.
>
> In addition to the new passenger terminal, the County has made significant infrastructure improvements to JWA as part of a $310 million master plan for the airport.
>
> There are now *ten* scheduled commercial air carriers serving JWA instead of the *two* which served the airport in 1978.
>
> There has been a significant growth in "commuter" or "regional" airline service at JWA. There are, presently, five regularly scheduled commuters operating at JWA in code-sharing arrangements with the major air carriers, and there are indications that the number of

regional airlines serving JWA may grow to nine carriers by next spring.

The level of permitted commercial flights has increased from 41 average daily departures in 1978 to approximately 103 average daily departures at the present time, with available capacity for further increases to approximately 160 daily flights as the demand increases and the air carriers receive and place into service new aircraft types.

JWA has grown from a pre-1985 constrained passenger service capacity of approximately 2.5 million annual passengers ("MAP") to a level of approximately 4.7 MAP. With the opening of the new terminal this past month, the County has provided capacity for further passenger service level growth to 8.4 MAP.

If it ever came as a surprise to anyone that there are some inherent environmental conflicts between airports and adjacent communities, those days are now long past. Throughout the nation, many communities are increasingly aware that the adverse environmental effects which they may suffer from airport operations *may not be necessary.*

Understandably, they have sought the attention of their local legislators and demanded inclusion of their concerns in the policy making processes affecting airport development and use. The level of their understanding and knowledge of the issues and facts relevant to these decision making processes has reached the point where they cannot simply be ignored, either as a practical political matter, nor as a matter of moral principal.

As observers of these controversies, not only in Orange County, but elsewhere, we also have come to believe that the time is probably now past when those groups and interests can be disenfranchised from the decision

making process - simply "taken out of play" - by the stroke of one piece of "preemptive" federal legislation. The local pressures *throughout the nation* for recognition and participation in the processes of airport development will not disappear: at best those pressures will be rechanneled to other forums. If the local communities affected by airport operations are excluded from the process of developing additional airport capacity and infrastructure, then they will certainly adopt methods and tactics designed to obstruct, at all possible levels, *any* airport capacity enhancement: it will be their only remaining remedy.

The issue, it seems to us, is not whether one segment of the airport controversy - the local noise affected communities - can be taken out of play so that they do not impede the expansion objectives of the airlines and the air cargo industry. Rather, Orange County believes that the primary focus of the concerns of Congress should be a consideration of whether the present institutional structure of airport development and regulation is so flawed that it no longer can act effectively as the regulatory mediator of these competing interests.

We are not convinced that that is yet the case. However, if that is the conclusion of the Congress, then the second task you face is to replace the existing system with an alternative regulatory structure which *more effectively* addresses the capacity *and noise issues* of concern to the communities and the industry.

The County has struggled with accommodating the multiplicity of interests concerned with airport development for two decades, but that struggle has been particularly intense since the industry was "deregulated" in 1978. In the succeeding 12 years, our experience has taught us that one of the best "litmus tests" for the success of our airport development and regulatory programs is to observe which interest groups seem completely satisfied with the end result. The best evidence that the appropriate balance has been struck is a situation where *none* of the interest groups is satisfied with the end result: if any one side of the controversy is smiling broadly, then you probably have not discharged the legislative obligation to recognize and accommodate as possible *all* legitimate interests affected by the legislative decision. When we read the "noise policy proposals" which have recently been crafted and

discussed in Washington, including Senator Ford's recent legislative proposal - S. 3094 - we think we can hear one side cheering, and we think you should be concerned about that.

Discussion

In discussing these issues, the County believes that there are certain premises which must act as a foundation for identifying the most effective means of resolving both aircraft noise and airport capacity issues. While these premises provide a framework for our views on these issues, they also implicate each of the six issues identified as being of particular interest to the subcommittee. These basic realities seem to us to include:

1. *Federal Interests.* The County has always recognized that there are substantial federal interests in maintaining a viable national air transportation system. Any solution to existing "problems" must, we acknowledge, recognize those interests and accommodate them to the extent feasible.

2. *Economic Aspects of Airport Capacity and Noise Issues.* It is not possible to do a strict, traditional "cost/benefit" analysis of airport development and the regulation of airport use. Certainly, certain aspects of the equation can be quantified in monetary terms, but others cannot. It would be fatuous to suggest that this controversy can be defined and measured solely by comparing "increased costs" to the airlines against potential money damage awards against local proprietors in airport noise litigation. Many of the "costs" of local air carrier service cannot be quantified easily in dollar terms, yet those costs are no less important to local communities than the elements of the equation which can be described in dollars and cents. Balancing quantifiable and unquantifiable costs and considerations is, of course, an inherent part of the legislative process at both the local and federal level.

3. *Airport Capacity and Airport Noise.* As we understand it, much of the justification offered for a "national noise policy" preempting local regulation of airport use is premised on the contention or simple assumption that there is an inherent incompatibility between the goal of providing increased airport capacity and infrastructure, and the goal of providing lower aircraft noise levels to affected local communities. This assumption or argument is not only incorrect and unjustified, but if it is to be the basis for the type of "policy" recently suggested either by the AIRPORT CAPACITY TASK FORCE or by Senator Ford's recent legislative proposal, then the ultimate consequence of federal policy will, most probably, *be a decrease in the ability of local communities to provide increased airport capacity and infrastructure.* In other words, the proposed "cure" for this assumed incompatibility may actually make the "problem" worse instead of better.

There *will be* a local response to any federal action disenfranchising local governments from the airport regulation process - those opposed to airport expansion will not simply fold their tents and steal away into the night. The Congress should anticipate that if local interests are precluded from playing a meaningful role in airport development and regulation, there *will be* a local reaction; and the Congress should anticipate that airport opponents will probably respond in many cases by trying all available means to block *any* airport expansion or capacity enhancements. This is a long term problem, not one capable of a legislative "quick fix." The solution to the "problem" must be identified with care if we are to avoid simply aggravating the existing problem thinking that we have, instead, solved it.

Local Communities

The interests of local communities in airport noise and airport capacity issues mirrors, in many cases, the national debate on these concerns. Certainly, in Orange County and elsewhere, many local community interests favor an expansion of commercial air service to support local economic growth and development. However, in Orange County, as in many other communities, there is a segment of the community which bears the environmental consequences of local aircraft operations and noise, and they view issues of airport growth from a different perspective. The evolution of the role which those groups have played in airport development and regulation is, we believe, an important element in reviewing the current institutional structure of airport development and regulation, and in considering alternative institutional structures.

During the 1960's and 1970's many of the opposition groups, particularly in the more affluent communities affected by aircraft noise, assumed an antagonistic role towards airport operations and development, and sought to influence the local decision making processes primarily through noise damage litigation. Their theory was that the threat of massive damage judgments against the proprietor would cause the proprietor to restrain airport operations and growth. However, while significant damage awards were made against a number of airports during this period, this was largely a failed policy, and many of the airport opposition groups have recognized that reality.

In many areas, including California, the 1980's marked a significant shift in strategy by airport opposition groups. Instead of relying on the threat of damage awards as a means to influence legislative policy, they have turned instead to the statutorily mandated land use and environmental processes as a means to oppose airport expansion - and *disabling local proprietors from regulating airport use by preemptive federal legislation will not take this tool out of their hands.* The simple reality is that before an airport proprietor in California can "pour concrete" to provide additional airport infrastructure, it must navigate through a myriad of environmental and land use laws, requiring, in many cases, permits from local agencies which are not airport proprietors. These processes are, and will remain, the "hook" which airport opposition groups can use to influence the airport development process. If "compromises" are not possible during these processes because the local

proprietor lacks regulatory authority to "make a deal" with these community groups, then the processes will be used by these groups as "last stand" opportunities to oppose *any* new airport infrastructure or other capacity enhancing airport projects.

Another significant development during the 1980's was the increased sophistication and knowledge of airport matters in airport opposition groups. Organizations like N.O.I.S.E. have provided a forum and mechanism for mutual education and information exchange by these community groups throughout the country. They have "networked" extensively, and they are now much more aware of the local implications of national aviation policy, and of the capacity of the air carriers to provide noise reduction to their communities.

We believe that this increased expertise and sophistication ensures that these groups will continue to be "players" in the airport development processes regardless of what limitations are placed on the authority of local proprietors to regulate airport use. If the proprietors are disabled from their traditional role of acting as the fulcrum between the local and the national interest, striking an appropriate balance reflecting all relevant and legitimate interests and concerns, then the groups opposed to airport operations and development will go to those *who do have the decision making power.* Increasingly, positions on airport issues may, under those circumstances, become a local "litmus test" of significance in congressional races. Instead of "camping out" in the offices of local elected officials to present their views on airport issues, they will "camped out" here in Washington.

While the County - as most other proprietors - would certainly prefer to develop its airport unfettered by opposition concerns or actions, the simple fact is that many of these community interests are expressing legitimate concerns which must be recognized and which, in fairness, must be accommodated in a reasonable balance between the interests of all concerned and affected parties to airport controversies. Certainly, the time has come now when airport opponents speak with a voice which cannot be silenced: at least not until the Congress and the Administration are prepared to reach down and exert preemptive federal authority over the most fundamental local land use and environmental processes as they affect airport development.

The question, it seems to us, is whether, during the 1990s, those competing interests are best handled at the traditional point of proprietor discretion, or whether the federal government should now assume the authority, responsibility, *and liability* for acting as the final arbiter of these controversies. If the federal government is now prepared to substitute its judgment for that of the local communities regarding the operation and development of their airports, then the federal government will, at a minimum, have to make fundamental changes in its perceptions and approaches to accommodating these competing concerns.

Federal Interests

Orange County has always recognized that there are important and legitimate federal interests in ensuring a viable national air transportation system. As we have addressed the inevitable conflicts between airport expansion and the impacts on local communities, it has long been our practice to affirmatively seek input from FAA and DOT on a continuing basis as we developed our programs and regulations.

The principal environmental document which has served since 1985 as the foundation for implementation of our master plan project for John Wayne Airport was also treated and considered as an EIS reviewed by FAA under the National Environmental Policy Act. Most - if not all - of our current restrictions were mitigation measures of the Master Plan EIR/EIS, and in that respect, FAA has acted as our partner in identifying the proper balance between service levels, environmental impacts, and economic consequences to the airport users and the local community.

More recently, the County adjusted its regulatory program to accommodate the capacity increases in operations levels and passengers served which coincide with the opening of our new passenger terminal. The preparation of this regulation followed a year-long process where all interested parties, including the airlines, local community groups, *and the relevant federal agencies,* were given at least three separate opportunities to submit written comments on the formulation of the regulation. The airport staff prepared and circulated two lengthy staff reports discussing the critical issues and incorporating the comments and concerns of the interested parties. Senior

airport officials made a number of trips to Washington throughout this period specifically for the purpose of having discussions with, and receiving input from, FAA and DOT officials. A number of public hearings were held throughout the process to allow elected and appointed County officials to participate in a dialogue on the issues with concerned parties.

Whatever else might be said about Orange County's regulation and development of JWA, it is indisputable that the program has been the result of a careful and deliberate process which afforded all concerned interests with numerous and meaningful opportunities to shape the form of the program.

Traditionally, the federal role in airport development and regulation of operations for noise purposes has been relatively passive. Although it certainly has existing statutory authority to aggressively regulate airport noise, it has chosen to leave the final responsibility for those decisions to local airport proprietors.

FAA should have been playing a more aggressive role in these controversies, and if the local proprietors are disabled from filling their traditional role in this field, FAA (or some other federal agency) *will have to* develop the capacity to accommodate and balance these competing interests.

FAA can bring two important things to the "table" in any discussion of a local airport controversy: its airspace and operational expertise and its access to data and information concerning the national air transportation system. Yet FAA has been reluctant, often recalcitrant, in offering local proprietors and local communities the full benefits of their particular expertise. The Part 150 program, as it has been managed by FAA, offers an excellent example.

Virtually every Part 150 study performed in recent years has involved the formation of a "Technical Advisory Committee" intended to provide expertise to the process. Local FAA officials frequently serve on these committees. Yet, often (if not always), the local FAA TAC representative plays a passive role, offering no policy guidance, and "reacting" to issues (if there is any "reaction" at all) instead of initiating possible solutions. Involvement in the basic policy issues are deferred by FAA to the "review" stage of the Part 150 process, when often faceless FAA officials in Washington and at the regional level "pass judgment" on the final product of the Part 150 study.

In effect, FAA has used the Part 150 process not to become an active participant in constructively addressing local airport controversies, but rather to set itself up as the "judge" of an effort which they largely failed to support during its formative stages. Increasingly, FAA has used the Part 150 process to place the entire "burden of proof" on local airport proprietors in a dramatic reversal of the traditional standards by which local legislative bodies usually have the product of their legislative discretion reviewed by other governmental authorities. This is inexcusable. It causes great resentment of FAA in the local communities and among airport proprietors. More importantly, it sends the message that FAA does not intend to be a constructive participant in these processes, offering its expertise *and superior access to critical information,* but intends instead to place itself in the position of exercising a "line-item veto" over local noise abatement programs. Even if local proprietors continue to have their traditional regulatory authority in this field, this attitude and approach should change: if local proprietors are to be preempted, this attitude and approach *must* change.

The airline industry, and increasingly the federal government, tend to view airport controversies as "economic" issues; and for the industry, at least, that is both appropriate and understandable. Local communities opposing airports, however, view airport controversies primarily as "land use" issues, and that is equally appropriate and understandable. The challenge of melding these inconsistent perceptions of the "problem" is a formidable one; and local airport proprietors, including Orange County, have struggled greatly with this thankless task as they have proceeded to provide additional airport capacity and infrastructure during the 1980's.

Often, out of a desire to "protect" their individual interests, the participants in the process of striking a balance between competing interests are reluctant to "share" important information which would facilitate a balanced and reasonable result. Frequently, this leaves the airport proprietor to do the best it can in weighing the inconsistent objectives and perceptions in fashioning a comprehensive airport development program. This is particularly true for the air carriers who, understandably, are reluctant sometimes to make public information on their aircraft acquisition plans, their scheduling needs and strategies, and other information which certainly should be considered, if the information were available. We have already noted FAA's failure to use its

superior information resources on the aviation system constructively as part of the dispute resolution process. Having equal access to important information "levels the playing field" for the participants: but, more importantly, it eliminates a significant source of distrust among the interested parties. Finding some means to enhance the public availability and dissemination of information should be a major goal of this process, and it would go a long way, we believe, to favorable conflict resolutions regardless of whether the proprietor or the federal government must act as the final policy decision maker.

There still *are* a limited number of Stage 3 airplanes available to the airlines, and there *are* many communities with an airport noise problem. It is important that those opposing airport projects at the local level *know that,* and that they be educated to the practical difficulties faced by the carriers in scheduling "quiet" aircraft into individual airports. But when the detailed information is not available on these issues, there is a predictable suspicion by some parties to the process over the accuracy of "general" representations of "facts" made by the airlines or the federal government. "Education" on the difficult and arcane areas of aircraft financing, scheduling, pricing, and other similar issues has made a difference in many cases, and we believe that a federal initiative to bring this information to the communities affected by airport controversies should be an important objective which will, in fact, greatly facilitate the ability of local agencies to actually implement airport capacity improvements.

The Economics of Aircraft Noise

The air carriers are publicly held companies operating for profit. In making their aircraft acquisition and scheduling decisions, they are motivated by identifiable costs and profit potentials. If no one insists that the noise *they generate* as a result of their activities be taken into consideration in making those decisions, the airlines will simply ignore the issue. Improvements in noise technology will be - at best - a by-product of other technologies which will motivate aircraft acquisition and replacement - such as improved fuel consumption rates and decreased crew costs, rather than being a principal focus of the corporate decision making process. On the other hand if local regulations of airport use make

profitability impossible, or if greater profits can be realized by diverting aircraft assets to other markets, then the air carriers can be expected to decrease or end their service to the regulated airport - and that is a consequence which local communities must accept if they undertake to regulate in this area.

Unfortunately, the "economics" of the "noise impacts" side of the equation cannot be expected to be part of the "marketplace" for "economic" decisions by the air carriers unless the local community, in making its decisions balancing desired service levels against environmental impacts, declares that such considerations *must be taken into account* by the carriers.

We have learned that this can most effectively be done by making the issue *a part of the market place,* by adopting regulations which provide *incentives* to air carriers willing to make noise abatement commitments to the local community. It is an approach which is consistent with the philosophy underlying airline deregulation. Our regulations recognize three different classes of aircraft based upon their noise characteristics. Our substantial growth in operational capacity since 1985 has been in the two quieter classes, and, in large part, those additional flight opportunities have been made available to the carriers which have purchased the new quieter aircraft and committed part of their use to Orange County service. *No air carrier has been forced to stop service at JWA as a result of our regulations, and no air carrier has been denied the opportunity to share in the capacity growth on terms applied equally to all air carriers.* In fact, most of the carriers (if not all) serving John Wayne Airport have enjoyed great profitability in their Orange County markets.

Those carriers which - voluntarily - made the most significant noise abatement commitments to the local community, have received the greatest growth opportunities. A good example is America West. Initially admitted to service at John Wayne Airport in 1985 with two flights per day, America West is now the third largest operator in Orange County; it has prospered and grown as a result of its corporate strategy of recognizing and meeting local community needs for environmental mitigation and improvements in the local quality of life. While each airport is truly unique in its role and relationship with its community, relying on a market place approach to noise control is, we believe, a viable model for many communities.

Conclusion

We believe that the early and effective adoption of PFC legislation as a means to provide additional financing for airport infrastructure is an important federal contribution to the future development of airport capacity. However, there is no convincing evidence, we believe, that a dramatic change in the traditional institutional structure which, for over 30 years, has addressed issues of airport/community incompatibilities is now required, either as a condition of PFC authority or as an independent federal policy initiative.

In fact, we are concerned that the federal government has no program or agency in place to replace the airport proprietor in its traditional role, and we believe that if the federal policy initiative is perceived as an attempt to disenfranchise opponents to airport development - and that seems inevitable - then the transfer of exclusive regulatory authority to the federal level will exacerbate, not resolve, the difficult problems inherent in actually implementing airport infrastructure improvements during the coming decade.

We appreciate the opportunity to present our views, and we are always available to your or your staff if there is any additional information we can provide to you on these difficult issues.

While the local community must accept the risk that its environmentally based regulations will result in less air service to the community, if that happens (and it has not happened yet), and if that result is unacceptable to the community, then the community can change its regulations to encourage more service, accepting the resulting degradation in the local environmental quality of life.

"Noise impacts" *are* part of the air transportation market place: there are real economic costs, real political costs, and real - if intangible - environmental costs which result from commercial airport operations in many local communities. If the air carriers are not required to take those costs into consideration, then, in effect, the local communities are being asked to provide yet another subsidy to an already heavily subsidized industry. This is not only unfair, but it is fundamentally inconsistent with the philosophy underlying the Airline Deregulation Act of 1978.

While there are legitimate federal interests in air transportation, there is no federal "market place" for air service: the "markets" for service are all local in nature, and those markets involve issues and considerations of environmental impacts which extend beyond the simple desire of the airlines to maximize their profits. While there is nothing wrong with the airlines seeking to maximize their profits, there is also nothing wrong with the local market places defining the "market conditions" which must be taken into account in the operations and equipment decisions of the airlines. The airlines are not a public utility: the country does not owe them each financial success and well-being. Those airlines which can and do make significant commitments of assets and resources to improve local environmental conditions - and many of them have done just that - deserve success in the local marketplaces where those are issues of concern.

Finally, we noted with interest that the GAO, in its recent testimony to this subcommittee, estimated that the costs to the airlines of completing their transition to a fleet of Stage 3 aircraft would amount to approximately 1% of their revenues. This, we submit, is not economically significant to the overall economic health of the industry, and it is a small price to require of the airlines to address and cure a problem which, after all, they have created as a result of their profit making enterprises.

TESTIMONY BY

GENERAL WILLIAM G. MOORE, JR.

PRESIDENT

METROPOLITAN NASHVILLE AIRPORT AUTHORITY

BEFORE

THE SUBCOMMITTEE ON AVIATION

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

HEARINGS ON

FEDERAL AVIATION NOISE POLICY

WEDNESDAY, OCTOBER 4, 1990

2167 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D. C.

37-824 0 - 91 - 29

FEDERAL AVIATION NOISE POLICY

THE GOAL OF A NATIONAL AVIATION SYSTEM WAS ESTABLISHED LONG AGO BY THE UNITED STATES GOVERNMENT. WITH THAT GOAL, OUR NATION MADE THE DECISION NOT TO HAVE LOCAL AND REGIONAL AVIATION SYSTEMS. OUR NATIONAL SYSTEM LINKS OUR NATION TO WORLD MARKETS. IT MEETS THE NEEDS OF INTERSTATE COMMERCE AND INDIVIDUAL TRAVELERS.

IN ADDITION TO PROVIDING ESSENTIAL TRANSPORTATION SERVICES, THE AVIATION INDUSTRY CONTRIBUTED 5.6% OF OUR GROSS NATIONAL PRODUCT AND 8.4 MILLION JOBS IN 1989. AS THIS INDUSTRY CONTINUES TO GROW, GREATER BENEFITS WILL ACCRUE TO OUR LOCAL, REGIONAL, AND NATIONAL ECONOMIES. OUR NATIONAL NOISE POLICY MUST NOT DETRACT FROM THAT GROWTH; IT SHOULD ADD STRENGTH TO THIS VITAL SEGMENT OF OUR NATIONAL ECONOMIC LIFE.

LOCAL AND REGIONAL AIR SERVICES FOR PASSENGERS AND CARGO ARE INTERLOCKED IN OUR NATIONAL SYSTEM. DELAYS AND RESTRICTIONS AT ONE AIRPORT DIRECTLY IMPACT SERVICES AT OTHER AIRPORTS. THAT IS THE CASE TODAY, AND IT WILL CONTINUE TO BE THE CASE AS WE MOVE FORWARD DURING THE COMING MONTHS AND YEARS.

PRESENT OPERATING RESTRICTIONS AT LOCAL AIRPORTS ARE THE PRODUCT OF COMMUNITY CONCERNS ABOUT NOISE. NOISE IS A NATIONAL ISSUE BECAUSE INCONSISTENT LOCAL NOISE REGULATIONS IMPEDE THE EFFECTIVENESS OF OUR NATIONAL AVIATION SYSTEM.

THIS NATION NOW NEEDS A NATIONAL NOISE POLICY IF OUR GOAL OF A NATIONAL AIR SYSTEM IS TO CONTINUE TO MEET THE DEMANDS OF CONSUMERS AND BUSINESS. MOST OF THE MAJOR ISSUES RELATED TO THAT POLICY HAVE ALREADY BEEN IDENTIFIED. I AM CONFIDENT THAT THEY WILL BE RESOLVED DURING THE DEBATE FROM WHICH OUR NATIONAL NOISE POLICY WILL EMERGE. TO THE EXTENT THAT I AM PERMITTED, I HOPE TO PARTICIPATE IN THAT DEBATE.

THE NOISE TASK FORCE ESTABLISHED BY BOTH AIRLINE AND AIRPORT REPRESENTATION AND THE AAAE AND AOCI, ARE ADDRESSING STAGE II AIRCRAFT PHASE OUT AND AIRPORT OPERATING RESTRICTIONS. I WOULD SIMPLY EMPHASIZE THAT STAGE II AIRCRAFT TODAY REPRESENT A SIGNIFICANT PORTION OF THE DOMESTIC AIRLINE FLEET AND WILL BE IN USE IN DIMINISHING NUMBERS OVER THE NEXT 10 OR SO YEARS AS THE AIRLINES REEQUIP WITH STAGE III AIRCRAFT. DURING THAT TIME PERIOD, AIRPORTS THAT RESTRICT THE OPERATION OF STAGE II AIRCRAFT WILL IMPOSE ADDED NOISE ON COMMUNITIES WHOSE AIRPORTS DO NOT HAVE SUCH RESTRICTIONS.

My purpose here today is to deal with the core issue upon which the success of our noise policy will rise or fall.

That issue is the need to develop better ways to respond to the very valid concerns of property owners near airports who are impacted by noise.

The concerns of property owners are generally the same, airport to airport. But the solutions vary widely. As a result, a hodge-podge of different airport operating restrictions, locally imposed in separate communities, add up to a nonsystem rather than a national system.

There are those who would have us believe that the concerns of property owners are simply the expressions of people who are generally opposed to growth. Let me state emphatically, I do not share that view.

The rights of private property owners and the pride they have in their homes and neighborhoods is a fundamental part of this nation's economy and culture. Those who are impacted by noise have a right to express their individual and collective concerns. And those of us who are involved in the policies that determine the operation and expansion of airports have an obligation to respond

TO THOSE CONCERNS. THAT OBLIGATION EXISTS AT THE LOCAL AND NATIONAL LEVELS.

AS ONE WHO IS NOW INVOLVED IN IMPLEMENTING ONE OF THE MORE PROACTIVE NOISE MITIGATION PROGRAMS IN THE UNITED STATES, I WANT TO SHARE SOME LOCAL CONCERNS WITH YOU, AND MAKE RECOMMENDATIONS THAT RESPOND TO THEM.

PROPERTY OWNERS IMPACTED BY NOISE MAY NOT UNDERSTAND THE TECHNICAL ASPECTS AND EXPENSE OF STAGE III AIRCRAFT. BUT, THEY DO KNOW THAT THESE AIRCRAFT ARE QUIETER AND THEY WANT THEM IN OPERATION AT THE EARLIEST POSSIBLE DATE.

HOMEOWNERS IMPACTED BY NOISE IN NASHVILLE KNOW WHAT A PART 150 PROGRAM IS, AND THEY ARE NOT ENTIRELY SATISFIED WITH THAT PROGRAM. AS A GENERAL GUIDE TO A NATIONAL NOISE POLICY, WE SHOULD KEEP FAIRNESS IN MIND. THIS POLICY WILL DETERMINE THE FUTURE LIFE STYLE AND FINANCIAL STATUS OF MANY INDIVIDUALS AND FAMILIES AROUND AIRPORTS. WE ARE ASKING THEM TO MODIFY THEIR HOMES. IN SOME CASES, THEY ARE MOVING FROM THE HOME AND THE NEIGHBORHOOD THEY CHOSE.

OUR NATIONAL NOISE POLICY SHOULD INCLUDE FUNDS FOR DIRECT MOVING COSTS IN THE PART 150 SALES ASSISTANCE PROGRAM. THE SALES

ASSISTANCE PROGRAM IS A MAJOR COMPONENT OF THE NASHVILLE, TENNESSEE PART 150 PROGRAM. THERE ARE 2,500 NASHVILLE PROPERTY OWNERS WHO ARE ELIGIBLE FOR SALES ASSISTANCE. MANY OF THE PEOPLE WHO WANT TO USE THIS PROGRAM TO MOVE AWAY FROM AIRPORT NOISE, QUESTION THE PROGRAM FAIRNESS. THIS PROGRAM IS VOLUNTARY AS ARE ALL COMPONENTS OF OUR PART 150 PROGRAM. BUT THE SIMPLE FACT IS THAT THE VOLUNTARY SALE OF A HOME BY AN OWNER WHO CANNOT BEAR THE NOISE MEANS THAT THE OWNER HAS TO MOVE. IT IS UNLIKELY THAT THIS MOVE WOULD TAKE PLACE, EXCEPT FOR THE IMPACT OF NOISE. ALTHOUGH THESE PEOPLE RECEIVE MARKET VALUE FOR THEIR PROPERTY, THEY MUST BEAR ALL MOVING AND FINANCE COSTS. I SUGGEST THAT THE EXPENSE OF MOVING SHOULD BE INCORPORATED INTO THE PART 150 SALES ASSISTANCE PROGRAM.

AS A SECOND STEP, A NATIONAL NOISE POLICY SHOULD RECOGNIZE THAT MANY PROPERTY OWNERS NEAR AIRPORTS HAVE LIVED IN THE AREA FOR MANY YEARS. THE MAJORITY ARE NOT WEALTHY, AND MANY LIVE ON FIXED INCOMES. THE INTEREST RATE ON THEIR PRESENT MORTGAGE IS LIKELY TO BE LOWER THAN THE RATE ON NEW MORTGAGE ON THE HOME TO WHICH THEY ELECT TO MOVE. IN THOSE CASES, IT APPEARS THAT OUR NATIONAL NOISE POLICY SHOULD EXTEND GOVERNMENT PROGRAMS THAT PROVIDE LOW INTEREST MORTGAGE RATES TO THESE HOMEOWNERS. THE FAIRNESS AND LOGIC OF THIS KIND OF ASSISTANCE ARE COMPELLING. PROPERTY OWNERS ARE KEENLY AWARE THAT RATES ARE SIGNIFICANTLY HIGHER TODAY THAN WHEN THEY MADE THEIR FIRST MORTGAGE. THEY UNDERSTANDABLY VIEW AS UNFAIR A PROGRAM

THAT REQUIRES THAT THEY MAKE UP THE DIFFERENCE FROM THEIR OWN POCKETS.

OUR NATIONAL NOISE POLICY MUST ALSO ANTICIPATE FUTURE EXPANSION OF AIRPORTS TO MEET CAPACITY. THE POLICY SHOULD SEEK TO DIRECT FUTURE LAND USE WITH APPROPRIATE INCENTIVESAT THE FEDERAL, STATE, AND LOCAL LEVEL TO REDUCE THE NUMBER OF HOMES AROUND AIRPORTS BY REDEVELOPMENT TO COMPATIBLE USES.

OUR POLICY SHOULD ENCOURAGE AND SUPPORT RESEARCH BY QUALIFIED INSTITUTIONS LEADING TO SOLUTIONS TO THE ISSUE OF NOISE, INCLUDING AIRCRAFT DESIGN, HOME CONSTRUCTION, LAND PLANNING, AIR TRAFFIC CONTROL, AND HUMAN FACTORS CONNECTED WITH NOISE TOLERANCE.

EXAMINATION OF THE FAA PART 150 PROGRAM SHOULD BECOME A PROMINENT PART OF THE FORMULATION OF A NATIONAL NOISE POLICY. THE GUIDING LIGHT OF SUCH EXAMINATION SHOULD BE FAIRNESS TO ALL.

AS WE SHAPE OUR NATIONAL NOISE POLICY, IT IS CRITICAL THAT WE EMPLOY ALL OF THE HUMAN ENERGY, PROFESSIONALISM, AND CREATIVITY AVAILABLE TO US. ONLY THROUGH THAT TYPE OF COMMITMENT WILL WE GENERATE THE PROGRAMS REQUIRED TO ENSURE THAT OUR NATIONAL AVIATION SYSTEM FUNCTIONS AS IT SHOULD.

IN ORDER TO ACHIEVE THAT GOAL, WE MUST FIRST FOCUS OUR ATTENTION ON THE INDIVIDUAL PROPERTY OWNERS WHO ARE IMPACTED BY INCREASING LEVELS OF NOISE AROUND OUR AIRPORTS. THEY ARE YOUR CONSTITUENTS. THEY ARE MY NEIGHBORS. YOU, ALONE, CANNOT SERVE THEM. I, ALONE, CANNOT SERVE THEM. BUT TOGETHER, WORKING UNDER THE REALISTIC STANDARDS OF A NEW, UNIFORM NATIONAL NOISE POLICY, I AM CONFIDENT WE CAN MAKE MEANINGFUL PROGRESS.

STATEMENT OF KEN PIPPIN

VICE CHAIRMAN,

BWI NEIGHBORS COMMITTEE

AND PRESIDENT,

GREATER FERNDALE COMMUNITY COUNCIL,

MARYLAND

BEFORE THE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

ON

FEDERAL AVIATION NOISE POLICY

October 4, 1990

Good morning, Mr. Chairman and Members of the Subcommittee. It is a pleasure and honor to appear before you today in my capacity as Vice Chairman of the BWI Neighbors Committee and President of the Greater Ferndale Community Council. Ferndale is an established residential community in nearby Anne Arundel County, Maryland, that shares an informal boundary with our next door neighbor, State of Maryland owned and operated Baltimore/Washington International Airport (BWI). I wish to commend you and the Subcommittee for holding these hearings and undertaking this comprehensive review of Federal aviation noise

policy. As a neighbor to a major commercial air carrier airport which, in my judgment, is trying very hard to be a "good neighbor," I think a renewed Federal commitment is in order.

As this distinguished Subcommittee is all too well aware, the Federal Government, commencing in 1968, has pursued a comprehensive national policy of abating aircraft noise using both statutory and regulatory programs. By January 1, 1988, this policy had resulted in the complete elimination of all large so-called "Stage 1" aircraft from the U.S. commercial aviation fleet. The effectiveness of this national policy is clearly evidenced by the fact that, between 1980 and 1985, approximately one million individuals previously exposed to unacceptable levels of aircraft noise found themselves residing <u>outside</u> shrinking airport noise zones around the Nation's commercial airports. While we did not achieve this result without great effort, Mr. Chairman, I respectfully suggest we need to take the next important steps as part of a renewed Federal commitment to abating aircraft noise at its source. We cannot and must not stand on past accomplishments. To stand still is to slide backward, Mr. Chairman.

In that spirit, I would urge that it now be made the policy of the United States, in concert with all affected parties, to set a date certain for the phaseout of Stage 2 aircraft. This is a logical and prudent extension of the established 1968 noise policy eliminating the earlier generation of jet aircraft. It is not my place here to suggest precisely what that date for phaseout should be, or what considerations with respect to the air carriers must be addressed in implementing this policy. What I would suggest, Mr. Chairman, is that pursuit of noise mitigation, environmental protection, and public health should not degenerate into a local race for Stage 3 aircraft, wherein those local communities and airports placing restrictions on Stage 2 aircraft "win", leaving other communities with the burden of accommodating noisier aircraft in the name of meeting airline economic needs and the Nations's interstate commerce needs. Both the air carriers and local communities need a level playing field--a floor if you will--of established Federal policy. Anything less will ultimately fail to serve the broad public interest.

In the remaining time allotted to me, Mr. Chairman, I would also like to briefly urge that our existing Federal noise

assistance programs be strengthened. Additional Federal resources should be made available to communities as part of the noise compatibility planning programs administered by the Federal Aviation Administration (FAA) ~~though~~ Through its Part 150 noise study process. Direct and active FAA involvement during the process can only result in better airport noise compatibility action plans and more timely review of local airport submissions. Having the FAA as a passive group sitting on the sidelines, conducting exhaustive 18-month reviews of airport noise abatement efforts, strikes me as most ineffective and inefficient. With adequate staff, the FAA can and should be working with all of us--not isolated in some far-removed regional office with rubber stamps labelled "approved" and "disapproved." The FAA has great expertise--and this should be available to local communities, airports, and air carriers during the planning process, and not just after the fact. Further, I think it is time the FAA and Environmental Protection Agency (EPA) be required to work together on noise and other environmental issues affecting airports. We cannot afford to have airports caught between the tugs of war of Federal agencies.

Finally, the Federal government should fully fund air

conditioning costs for home and schools which are soundproofed under the Part 150 process. To close up a structure to keep out noise without air conditioning in many climates simply does not make sense.

I respectfully conclude, Mr. Chairman, that too many years have passed without a renewed Federal commitment to addressing aircraft noise. The Subcommittee is to be applauded for addressing this issue, and I trust you share my interest in seeing a renewed Federal commitment to a truly national aviation noise policy. Thank you for this opportunity to participate in this assessment.

To: Subcommittee on Aviation of the Committee on Public Works and Transportation.

From: Greater Severna Park Council, Severna Park, Maryland.

Subject: Testimony on Federal Aviation Noise Policy.

Introduction:

Mr. Chairman, members of the committee, ladies and gentlemen;

Good morning;

My name is Bob Stolmaszek. I currently live in the Severna Park, Maryland area about ten miles south east of Baltimore - Washington International Airport (BWI). I have served in the role of technical advisor to the Greater Severna Park Council, an umbrella organization representing sixty two home owner associations and approximately thirty five thousand people, since nineteen eighty eight (1988). My qualifications include fourteen years (1967-1981) as an air traffic controller shared between the BWI and Los Angeles International Airports, and I have been a commercially licensed, general aviation pilot since nineteen seventy five (1975). Since nineteen eighty two (1982) I have been employed by the National Aeronautics and Space Administration serving as the manager of Space and Ground communications systems in support of the Space Shuttle.

My purpose in appearing here today is to share with you some of the frustrations, in the form of reduced quality of life, that are being experienced by the communities in the Severna Park area as a direct result of the expansion of commercial aircraft operations at the BWI airport during the past decade. I would also like to take this opportunity to express my views on

how the impacts of this increased aircraft noise and pollution can be, to some degree, mitigated through appropriate application of noise abatement strategies currently documented in FAA literature, and my belief that perhaps the best method for achieving this goal is to develop an end-to-end systems approach to dealing with these issues at the national level.

Background:

BWI began life as a modern, if underused, facility called Friendship International Airport. In nineteen fifty eight (1958) Friendship became the termination point of the first non-stop transcontinental turbojet flight. In nineteen seventy two (1972) the Maryland Department of Transportation assumed ownership and management of the airport and began an aggressive campaign to make Friendship profitable. Following several years of major facilities enhancements and a name change designed to bring to the aviation community an increased awareness of BWI's potential as a significant element in the national airspace system, BWI was selected as the location for major expansion by Piedmont (now US Air) Airlines. The decision to develop BWI as an airline hub was a "shot-across-the-bow" of the surrounding communities indicating that a real threat to the accustomed tranquility of areas like Severna Park was imminent.

The Problem:

Since nineteen seventy seven (1977) the number of annual commercial air carrier operations at BWI has grown from seventy four thousand, five hundred twenty two (74,522) to one hundred fifty nine thousand, three hundred eighteen (159,318) in nineteen eighty nine (1989). This growth has proven an economic asset to the state of Maryland. The Severna Park Council feels it is

appropriate to support the successes associated with this economic advancement recognizing that the creation of employment opportunities and the overall boost to the state's fiscal and business health is significant and necessary. The council additionally feels that there are undesirable outputs from the engine of this prosperity, namely excessive aircraft noise and pollution, which can be managed in a systematic fashion without pitting communities against one another via the "not-in-my-backyard" syndrome, and that for the past four (4) years the council's efforts at stimulating any positive remedial actions in this area have proven futile.

The Federal Aviation Administration has published a report (# FAA-EE-86-02, May 1986) containing thirty seven (37) categories of noise abatement and mitigation procedures applicable to varying airport/community situations. This report identifies the strategies, ranging from elementary to elaborate, in use at each airport in the country. For example; Portland, Oregon has implemented fifteen (15) noise abatement procedures; Minneapolis/St. Paul, Minnesota uses seventeen (17); San Francisco, California has legislated fourteen (14); Milwaukee, Wisconsin uses fourteen (14); Washington National uses eleven (11), and so forth. The BWI airport has five (5) noise reduction strategies identified, only two (2) of which apply to in-flight aircraft, and even these procedures, a preferential runway use program and departure turns designed to provide relief to noise sensitive communities, are rarely used. The problem clearly is one of inconsistent application of documented, tried and proven noise mitigation procedures which is allowed to occur because "the buck stops nowhere". Who is in charge? .

Corrective Strategies:

Each airport in the country must deal with unique situations relating to the type of aircraft using its facilities, the sensitivity of adjacent communities, the airport's geographic, political and demographic environment, and so forth. For each set of circumstances a corresponding configuration of noise control actions can be identified and implemented to achieve the most ideal compromise balancing the airport's goals of economic vitality with the surrounding communities' justifiable intent to retain a reasonably uninfluenced quality of life.

Several candidate noise control strategies exist which, if applied to the BWI situation, would provide immediate relief to virtually all affected communities in the BWI area, regardless of their locations relative to the "designated airport noise zone." For in-flight aircraft these strategies include, local pattern restrictions such as the "keep-em' high" policy, mandatory crossing altitudes, noise reducing climb-out techniques, a rotational runway use system, and revised arrival and departure paths. None of these procedures are viewed as economically disadvantageous to the air carriers because no new equipment purchases are needed and flight paths should not be greatly extended, although, in certain cases longer taxi routes to/from the runways may occur. I should point out that other benefits would be realized with the implementation of some of these techniques in the form of increased safety and reduced fuel use.

Summary:

1. The greater Severna Park area has been unnecessarily and unfairly subjected to the noise and pollution generated as a byproduct of the booming success of BWI.

2. Relief is possible without undue hardship on any segment of the aviation community, and without the need for inventing new technologies and/or procedures.

3. Voluntary noise abatement efforts are nice gestures, but not particularly effective.

4. A national level process for identifying, mandating, and overseeing compliance with noise abatement regulations is needed, but must be free from the agencies charged with implementation.

On behalf of the Greater Severna Park Council, I thank you for this opportunity to outline our concerns and express our feelings on how they may be dealt with.

Airport
Coordinating
Team, Inc.
P.O. Box 904
Severn, MD 21144

TESTIMONY

of

DENNIS STEVENS

PRESIDENT

AIRPORT COORDINATING TEAM

ACT

before the

SUBCOMMITTEE ON AVIATION

of the

COMMITTEE

on

PUBLIC WORKS AND TRANSPORTATION

CONGRESSMAN JAMES L. OBERSTAR, CHAIRMAN

OCTOBER 4, 1990

Working for a Quieter and Safer Airport

Airport
Coordinating
Team, Inc.
P.O. Box 904
Severn, MD 21144

October 4, 1990

Good day, Chairman Oberstar, members of the subcommittee, ladies and gentleman. I am Dennis Stevens, president of the Airport Coordinating Team (ACT), that was formed in 1987, and is now incorporated, in responge to the planned substantial development of Baltimore-Washington International Airport (BWI) as proposed by the State of Maryland Aviation Administration that owns and operates this airport. These plans were stimulated by a promise of the then U.S. Secretary of Transportation Elizabeth Dole to provide over 70 million dollars to the State of Maryland for the expansion of BWI to satisfy concerns of Maryland about the turnover of National and Dulles Airports to an airport authority dominated by the State of Virginia. This planned expansion is a primary reason for my being here today. ACT does not believe the residents living around BWI are adequately served by what the Maryland Aviation Administration calls its noise abatement plan. It relies heavily on flight path changes (noise re-location), a voluntary approach to the switch to Stage 3 aircraft and a Noise Assistance Program involving buy outs, sound attenuating homes (One public school has been sound attenuated.) and resale assurance, which is an attempt to compensate homeowners for any loss up to a certain limit in sales value when their home is sold. We believe this plan needs to be strengthened, not weakened by a Congressional mandate. ACT is presently in litigation about the adequacy of this plan and the procedures that were followed for its adoption. For your review I have provided with this testimony the goals and objectives of ACT.

In early 1989 a general survey was conducted by the Linthicum-Shipley Improvement Association, whose members live in a community adjacent to the northern boundary of BWI. I live in Linthicum,about 1½ miles from the nearest runway. 95% and 93%, respectively, of those who responded to inquiries regarding the need for mandatory noise abatement procedures and the mandatory phase in of Stage 3 aircraft, favored these measures.

Over the last 3½ years I have spoken with numerous persons whose lives have been adversely impacted by airport operations. Some have moved away, some have had their homes sound attenuated under the Noise Assistance Program and others have chosen to stay and work for solutions to the noise and air pollution caused by airport operations. We have worked with our local elected officials and have attempted to influence airport planning. Along the way we have met with a degree of success. During the comment period for the Environment Impact Statement on the extension of a general aviation runway for use by commuter aircraft, we worked very closely with the U.S. E.P.A. and were satisfied with the comments of this agency. We believe the interaction between ACT and EPA was beneficial. EPA was concerned that this project should not be viewed independent of other expansion projects and about the less than adequate analysis of single-event noise measurements. It is my understanding based on last weeks announcement by the Federal Aviation Administration that such analyses will be required on future EIS's for BWI. This is good, but if these analyses are not accompanied by meaningful noise abatement measures, residents around the airport will not

receive adequate relief.

All communities affected by BWI operations would like to see increased use of Stage 3; one community leader is pushing for huskit applications. In 1989 ACT attempted to have put into law a Stage 3 requirement from 10 pm - 7 am (8 am Saturday and Sunday) for airlines (Air freight were excluded.). The bill failed even to get out of committee. The State Aviation Administration and Piedmont Airlines opposed it. We looked upon this legislation as a phase in measure for Stage 3. The State presently has a voluntary program to bring in more of these aircraft. The claim by the State is that it takes so long for an airline to receive delivery of a new Stage 3 that this impacts the ability to put them into service. Of course this fails to recognize that an airline could schedule more Stage 3 into BWI with the existing fleet that over the years is comprised of more and more of these planes. A mandatory phase in makes a carrier work harder not only to purchase these quieter aircraft, but also to make the scheduling changes to conform to the noise abatement rule. The implementation of Stage 3 must be on a mandatory phase in schedule.

On September 25th Mr. Thomas Duffy of the National Organization to Insure a Sound-controlled Environment, before this subcommittee made some very pertinent and substantive recommendations. We support the recommendations made in his testimony with emphasis on the need for the mandatory phase out of Stage 2 and the phase in of Stage 3. The distinction of a Stage 3.5 is important. As an example, from aircraft certification data on two Stage 3 aircraft published in a 1985 FAA circular, on takeoff measurements the quietest B-737-300 produced 82.8 EPNdB and the noisiest MD-80, 92.7 EPNdB. This difference is readily detectible by human perception.

In terms of what the local communities could be asked to pay, for a phase in of Stage 3, we would be totally opposed to the imposition of a Federal review board to have authority over local noise rules as recommended by the Aviation System Capacity Task Force. We, the communities around BWI have had a hard enough time attempting to get State officials to implement meaningful noise abatement (and the State of Maryland has laws governing aviation noise). We don't need the added burden of having to deal with a Federal board and possibly the Federal courts. Local problems should be dealt with locally. Remember, behind all local noise rules is either litigation, the threat of litigation or some other form of public pressure. Too much effort has and will continue to be put into the adoption of noise rules to allow some other body of people external to local conditions to have authority to overrule important abatement measures. The give and take involved in the controversies of the airport proprietor versus the community has many twists and turns and is more understandable by those with a local perspective. It would be unfair to both parties to interpose a third party (a Federal review board) with authority to undo a carefully constructed rule adapted to local conditions. Not only could the rule itself be challenged but also the authority allowing the rule, thus, unduly burdening a community because of a delay or voidance of a rule. ACT has been into State court twice. We do look forward to having to also deal through the Federal court system.

Somehow we all must exist within our means. Airports must not be allowed to destroy communities, air carriers must recognize their duties to reduce air and noise pollution and not just expand to increase profits. The economics of the air transportation industry must not overwhelm the environmental considerations to diminish quality of life. The "do it now" or "build it" attitude must be tempered by consideration of what it will mean to those most adversely affected.

The "no-build" option must be realistic, seriously considered when communities around an airport are opposed to an expansion project. The beauty of the woodlands the tranquility of the fields must be preserved for us and future generations as a legacy that we cared about our environment and our quality of life. The basic rights, as elucidated by Thomas Jefferson in the Declaration of Independence, of "life, liberty and the pursuit of happiness" must not be taken away from the citizenry. We must some how learn not to destroy the village in order to save it. The Federal government must compliment not compromise local noise control.

If the proprietor of an airport, because of public pressure or judicial declaration, puts into effect a ban on Stage 2, this ruling should be allowed to stand because the segments of the public most impacted wanted relief to conduct their daily activities and to sleep without noise disturbance. The EPA concluded in its comments to the FAA regarding the Part 150 process that up to 20% of those persons sleeping are likely to be awakened by the flyover of an aircraft producing a single-event noise level (SEL) of 80 dB (common noise level of a Stage 2 flyover). Sleep disturbance is of major importance because it can adversely affect our work performance during the day.

It must also be understood that Stage 3 aircraft can be considered noisy also. I indicated earlier in my testimony that there are differences in noise levels of similar Stage 3 aircraft. This leads to the conclusion that if an airport proprietor is put into the situation of having to limit the number of aircraft using the airport based on noise, a Federal review board should not be allowed to overrule this limitation. Again, we must learn to live within acceptable limits to protect the well-being and quality of life of those affected by machinery flying over their residences. We should take a hard look at our limitations. It is advisable to balance the cost of sound attenuating buildings and re-locating people out of noise impacted areas against the cost of controlling and limiting the sources of this noise. How much cost to an air carrier is involved in the implementation of daytime and nighttime flight restrictions?

Isn't it really true that the movement of people and freight is not limited to the air industry. Rail, trucks, buses and ships can accomplish this but not as fast. Then again, why must we always be in a hurry. Can't we slow down and slacken our pace of living.

There is another cost associated with the movement of people and materials in addition to air and noise pollution and that is the expenditure of energy to accomplish this movement. Indicated in the Transportation Energy Data Book: Edition 10, of the U.S. Department of Energy in a chart entitled Passenger Travel and Energy Use in the United States, under BTU's per Passenger Mile, the following is sited (I have indicated in the column to the right the percent certified route domestic air carriers exceed other modes of transportation in BTU's per passenger mile:

1987 Data

Mode of Transportation	BTU's per Passenger Mile	Percent Certified Route Domestic Air Carrier Exceeds
Automobiles	3,841	23.7
Personal Light Trucks	4,762	-
Motor Cycles	2,269	109.5
Buses		
Transit	3,761	26.4
Intercity	939	406.2
Air		
Certified Route Domestic Air Carrier	4,753	

Mode of Transportation	4 BTU's per Passenger Mile	ACT 10-4-90 Percent Certified Route Domestic Air Carrier Exceeds
Air		
General Aviation	11,218	-
Rail		
Intercity	2,537	87.3
Transit	3,534	34.5
Commuter	3,138	51.5

It should be noted that Stage 3 aircraft, I understand, are more energy efficient than Stage 2. I have been informed by a representative of the Air Transport Association that aircraft which have had hushkit treatments use more fuel than prior to these applications.

As can be seen on this chart the aircraft is not even determined to be as efficient as the automobile. This should be of concern. Transportation by rail needs more emphasis from the stand point of efficient use of energy. If we look at fuel prices today, air travel does not look attractive.

In summary we believe:

1- There should be incentives to encourage more use of Stage 3; however, not at the expense of local control and noise rules. We must recognize that Stage 3 are noisy also and that limits to their frequency of use may be apprpriate.

2- A Federal review board should not be granted the authority to void local noise rules. Too much local effort went into their development for the protection of residents.

3- A Stage 2 non-addition rule is needed. Stage 2 must be phased out.

4- A Stage 3.5 should be defined. Not all Stage 3's are equally quiet. Some are only a little better than Stage 2.

5- The rights of property owners must not be reduced or ignored. Simply moving people out of a noise impacted area does not get to the root of the problem. Reducing noise at its source and limiting noise incidents does.

6- Unless we provide for the preservation of the rights of our people, they will be in danger of loosing them. Those most severely impacted by noise and air pollution must be considered first.

7- A quiet environment stimulates thinking, the development of ideas and the enrichment of our lives. Domestic tranquility is essential for a society and must be preserved.

Thank you for the opportunity of making this presentation

Dennis Stevens

Dennis Stevens

ACT

AIRPORT COORDINATING TEAM

1. WHAT IS ACT? ACT was founded in January of 1987. We are a group of voting age citizens concerned with unlimited growth at BWI Airport. ACT is an incorporated non-profit community organization, coordinated by a seven member Board of Directors.

2. WHAT ARE THE MAJOR ISSUES ABOUT WHICH ACT IS CONCERNED? We are primarily concerned with unabated AVIATION RELATED NOISE and its adverse impacts on the community. We are also concerned with the following: SAFETY, AIR QUALITY, WATER QUALITY, PHYSICAL DAMAGE TO HOMES AND OVERALL QUALITY OF LIFE.

3. WHAT ARE THE MAJOR GOALS OF ACT?

   * Stop further growth at BWI until (1) sufficient noise abatement measures, both physical and procedural, are actually placed into service, and (2) the surrounding communities are assured that sufficient air control procedures are in effect to ensure safety;

   * Thereafter, we support LIMITED & CONTROLLED GROWTH unless the Maryland Aviation Administration insists on expanding BWI to whatever the economic market will bear, in which case,

   * ACT advocates construction of an additional airport with minimal adverse impacts at another location in Maryland to absorb the growth.

   In other words, we want QUALITY OF LIFE not economic growth to be the final determining factor affecting the ultimate sizing of air operations at BWI.

4. WHAT ARE THE MAJOR OBJECTIVES OF ACT?

   a. Opposition to the extension of the general aviation runway, extension of any runway and construction of a parallel jet runway.

   b. Moratorium on further expansion of terminal facilities.

   c. Establishment of a verifiable, realistic, and up-to-date certified airport noise zone.

   d. Moratorium on further growth of the USAir Hub operation at BWI.

   e. Conversion of BWI to a Stage III airport not later than December 31, 1992.

   f. Phased implementation of a noise lid-budget concept so as to limit the total level of aviation noise in any given year to that experienced at BWI in 1982. ACT would want this mandate to be fully achieved by December 31, 1992.

   g. Implementation of a total aviation noise curfew at BWI between the hours of 10 P.M. and 7 A.M. the following morning. ACT would want this requirement placed in effect as soon as possible but not later than December 31, 1992.

h. Immediate implementation of physical and procedural measures to reduce ground noise.

i. Insulation of all schools within the 65 Ldn noise contour.

5. WHAT METHODS WILL ACT EMPLOY TO ACHIEVE OUR GOALS AND OBJECTIVES? We will conduct an extensive information campaign and a grass-roots membership drive. We will seek endorsement from the various civic associations on various airport related issues. We will conduct public opinion polls and petitions. We will elicit community attendance at the various public hearings. We will initiate litigation as necessary to achieve our goals. Currently we are working with the Baltimore Law Firm of Anderson, Coe and King in litigation against the Maryland Aviation Administration.

6. WHAT CAN YOU DO?

First, determine if you agree with the goals and objectives of ACT. If so, please join us. We are asking for a donation of $2.00 to cover administrative expenses. Any amount would be appreciated, however, the most important thing to us is your membership, not the money.

Sign up on our volunteer list. The various opportunities are spelled out on the membership application.

Appear and testify at public hearings related to noise abatement and airport development.

Write to your elected officials expressing your concerns about the airport. Let them know that the issue is so important to you that if something substantive is not done soon, you will not vote for the incumbents in the next election.

7. In conclusion, please remember that ACT is NOT: concerned ONLY about people and conditions adjacent to BWI; comprised ONLY of people that live near BWI; OPPOSED to further GROWTH at BWI; in favor of CLOSING BWI; AGAINST homeowner's assistance. We are simply working for a quieter and safer airport.

Thank you,
Board of Directors
ACT

ACT
P.O. Box 904
Severn, Md. 21144

REGULAR MONTHLY MEETING: 3rd. THURSDAY, 7:30 P.M., GEORGE CROMWELL ELEMENTARY SCHOOLS, WELLHAM AVENUE, GLEN BURNIE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

HEARING ON FEDERAL AVIATION NOISE POLICY

OCTOBER 4, 1990

STATEMENT OF JOANNE W. YOUNG, ESQ.

LORD DAY & LORD, BARRETT SMITH
1201 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 393-5024

GENERAL COUNSEL TO
THE COALITION FOR AIRCRAFT MODERNIZATION

The Coalition for Aircraft Modernization appreciates this opportunity to present its views on the appropriate content for a national aircraft noise policy. By way of introduction, the Coalition for Aircraft Modernization is a broad-based aviation industry organization seeking the development of an economically balanced aircraft noise policy through public education, regulatory and legislative action. Its membership is open to all types of entities which support these objectives, and includes aircraft lessors as well as financial services companies involved with the transportation industry. It seeks to effectuate a series of public policy objectives, including development of aviation policies which take due account of the interests of the travelling public, alleviating constraints on aviation infrastructure capacity, responding to legitimate environmental concerns, and ensuring that civil aviation continues to be capable of playing its traditional role in supplementing military resources in times of national defense emergencies. Being a broad-based industry coalition, the group represents a much more diverse range of interests and concerns than individual entities or trade associations speaking for specific segments of the industry.

The Coalition was formed to ensure all affected interests receive equitable treatment as aircraft are replaced by newer, quieter types of equipment. While the "Industry Task Force," among other formal groups, has provided a vehicle for the

expression of the viewpoint of carriers and airport operators, the Coalition, in a sense, was formed to enable the "silent majority", which was not included on those panels but is very keenly interested in the outcome of this debate, to have its voice heard. The Coalition therefore welcomes the interest this Committee is taking in modernization of the commercial aircraft fleet to reduce aircraft noise levels. While the Coalition is not opposed to the gradual phasing-in of rational noise measures, it is categorically opposed to the imposition of any restrictions which fail to take account of the economic realities associated with implementing across-the-board restrictions. Moreover, it is strongly of the view that the issues of aircraft noise and airport capacity are closely linked, and any policy intended to deal effectively with aircraft noise must take due account of the implications on airport capacity. In this regard, we note with encouragement that the Senate Aviation Subcommittee is reportedly considering linkage of the "passenger facility charges" legislation, which is essentially a measure to facilitate enhanced airport capacity, with a national aircraft noise policy.

We also submit that policy options must be evaluated with due consideration to their impact on the travelling public, i.e., whether regulatory restrictions on fleet growth due to a non-addition rule, and regulatory requirements for premature retirement of aircraft with economic useful life remaining, will constrain capacity so severely as to prevent the industry from

meeting the transportation needs of the public, driving-up prices, forcing the financially weaker carriers out of the market, and stifling potential new competition. In addition, the financial impact of the policy options must be carefully considered, given the staggering amounts of capital which will be required to fund the transition to an all-Stage 3 fleet, and the obvious repercussions for the industry and the public which it serves. Unreasonable proposals to mandate elimination of Stage 2 aircraft at a rate inconsistent with the ability of the industry to procure and finance replacement equipment can only translate into higher fares for the travelling public. In this connection, we believe it is vital that current Stage 2 aircraft owners continue to have access to a second-hand market in which to dispose of these assets at a fair price and thereby generate at least some of the capital necessary to acquire new Stage 3 equipment. For this reason, the Coalition supports a phased transition to Stage 3, whereby those segments of the industry which have traditionally relied on the used market for their equipment needs can continue to do so.

The Coalition is concerned that any policy options adopted to address the issue of fleet modernization take into consideration the present state of development of noise abatement technology, as well as its availability on a large-scale and economically viable basis, and the capacity of aircraft manufacturers to supply sufficient quantities of Stage 3-compliant

aircraft to meet increased demand resulting from the imposition of restrictions, as well as the natural growth which has been forecast for the industry.

The Coalition Proposal for a National Noise Policy

While the Coalition is generally supportive of the eventual need for a national noise policy, given the current situation in the Persian Gulf, we question whether the timing is the best to proceed with consideration of this matter. Fuel prices have risen dramatically over the past two months, causing a severe adverse impact on the profitability of the industry, especially for the financially weaker carriers, many of which face the greatest burdens in transitioning to an all-Stage 3 fleet. Recent events in the Persian Gulf have also highlighted the importance of maintaining and increasing the capability of the Military Airlift Command to meet the logistical support requirements of the national defense. In this regard, a considerable proportion of the U.S. civil air cargo fleet, which could be made available to the military in times of national emergency, is Stage 2. Before mandating that these aircraft be taken out of service prior to the end of their economic useful life, we submit due consideration be given to the impact such action would have on our nation's defense preparedness.

The Coalition has endorsed a specific proposal to achieve the transition to an all Stage 3 fleet in an economically feasible manner. In brief, the Coalition objects to the

promulgation of any "non-addition" rule, but submits that if one is nevertheless enacted, it should be similar to and no more restrictive than those adopted by the EEC and ECAC, and should be preceded by a reasonable period of prior notification to aircraft owners and the public. The predicate for the Coalition proposal for the transition to an all-Stage 3 fleet is that any operating ban on Stage 2 aircraft be linked to the ability of owners and operators to comply. It is indisputable that the "major" carriers,* which own or operate approximately 70 percent of the U.S. Stage 2 fleet, are better situated economically to convert to all-Stage 3 than are the "national" carriers** or the smaller "regionals", cargo and charter carriers. In addition, while the "majors" have always to a large extent relied upon new aircraft, the "nationals" and smaller carriers have traditionally relied on older aircraft purchased from the larger carriers through the used aircraft market in order to develop and expand their fleets. Accordingly, the Coalition would support a three-part, phased transition to Stage 3 compliance with the "major" carriers achieving compliance in three equal increments by December 31, 1999, 2004, and 2009; "national" carriers in two equal increments

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* DOT's definition of "major" carrier is one with over $1 billion in annual operating revenues.

** DOT's definition of "national" carrier is one with over $100 million but less than $1 billion in annual operating revenues.

by December 31, 2004 and 2009; and all other carriers by December 31, 2009.

The Coalition also proposes that exemptions to any operating ban be provided for special uses such as fire-fighting and medical evacuation. In addition, because Stage 2 aircraft comprise a substantial percentage of the Civil Reserve Air Fleet (CRAF), the Coalition endorses an exemption from any operation ban for suitable cargo and cargo-convertible aircraft dedicated to the CRAF program, in order to prevent a critical shortage in emergency airlift for national defense purposes.

While the Coalition is proposing specific phase-out dates in an effort to make its comments as useful as possible to the Committee, this proposal assumes hushkit and re-engining technology will be certificated and available on a reasonable economic basis. The Coalition believes it imperative that no definite phase-out timetable be adopted until retrofit technology has been developed and is in fact commercially available.

The Coalition proposal is based on the belief that rigid, heavy-handed regulation is not the appropriate answer to the noise issue. Instead, a flexible approach should be pursued which takes account of the financial, technological, and practical constraints. Unduly rigid regulation will lead to reduced service options, reduced competition, and higher fares -- which is not, we submit, what the majority of Americans want. A more flexible and rational noise policy, such as that proposed by the Coalition,

will avoid these pitfalls while achieving increased responsiveness to environmental concerns.

The Government Must Undertake Major Initiatives to Increase System Capacity

A significant consequence of the aircraft noise problem has been stagnation in airport capacity. No major new airports have been built in the U.S. since Dallas/Fort Worth opened in the mid-1970s, only one new airport--Denver--is underway today, and few others are even on the drawing boards. In the wake of deregulation, however, U.S. airline traffic has grown from 275 million passengers in 1978, to 487 million in 1989, and with forecasts for further growth, to 900 million passengers by the year 2000. Based on this growth estimate, it is forecast 65 major U.S. airports will exceed their rated capacity by the turn of the century.

This capacity stagnation has been brought about largely due to objections by a small but vocal minority to the construction of new airports, expansion of existing ones, and alleviation of nighttime curfews because of concerns over aircraft noise. Many of these critics moved to neighborhoods surrounding airports long after the airports had been built, knowing full well the noise impact they would be exposed to. The Coalition believes it is imperative due account be given to the needs of the "silent majority" who require frequent, low-cost air service and its attendant economic benefits for the communities in which they

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live. Given increasing international interdependence, the importance of an extensive range of air service to the economic health of communities will become even greater in the future. In brief, we submit it is wrong, as a matter of policy, to allow the complaints of the few to strangle the capacity needs of the larger community. Accordingly, it is vital that Federal action to deal with the aircraft noise issue also take account of the need to increase system capacity to accommodate the massive growth which has taken place over the past decade and is forecast to continue into the future.

Preemption of Local Noise Restrictions is Essential

The Coalition strongly believes the feasibility of any program aimed at phasing out Stage 2 operations is dependent upon the Federal Government's preemption of the field of noise regulation. The present system, which allows for the imposition of local controls more stringent than federal standards, has resulted in a virtual "patchwork quilt" of noise restrictions, making the ability of a carrier to fly a given aircraft into each airport on its system a hit-or-miss proposition.

If Stage 3 is adopted as a national noise standard, then the Coalition submits it is imperative to assure uniform application of this standard. Hushkit technology is capable of bringing Stage 2 aircraft into compliance with Stage 3 standards, but does not provide an appreciable margin of compliance, and may require operational trade-offs. Since for many owner/operators,

particularly the smaller carriers, hushkitting is the only economically feasible option for complying with Stage 3 standards, it is imperative that local governments and/or airport operators not be permitted to promulgate noise restrictions any more stringent than Stage 3, or a large number of carriers will be denied access to those airport facilities, giving unfair competitive advantage to the stronger airlines with more modern fleets. To do so would serve to promote the development of an oligopolistic market structure in the air transportation industry, to the detriment of consumer and competitive interests.

The Coalition does favor allowing local airport operators which desire to accept a higher amount of aircraft noise, in order to encourage economic development, attract increased air service, or for other reasons, to do so. If, given local conditions, it is not necessary to mandate total elimination of Stage 2 aircraft, then no valid purpose is served by slavishly requiring such communities to forego the countervailing economic advantages of accepting higher levels of aircraft noise.

It is clear that behind the efforts of local governments to further restrict aircraft noise is the threat of legal action by local interests, due to airport operators' liability for damages for noise. The Coalition submits that in exchange for the Federal Government preempting local noise restrictions, Congress should grant immunity to local airport operators from noise-based lawsuits.

Conclusion

As discussed above, the Coalition for Aircraft Modernization believes that a rational policy for fleet modernization is dependent upon a recognition of the harsh economic realities facing the airline industry. While not opposed to a gradual phase-out of Stage 2 aircraft from the United States fleet, the Coalition believes the timetable for the phase-out must be linked to the owner/operator's ability to comply with the new standards. The economic burden of the transition to Stage 3 will be staggering; before owners and operators are asked to shoulder this burden they should be assured the transition will take place according to an economically realistic schedule, and they will be accorded the ability to recoup their investment. Specifically, the phase-out timetable should take account of prevailing financial and technological constraints including the need of current Stage 2 owners to have a viable second-hand market in which to dispose of those assets without undue financial loss, there should be Federal preemption of inconsistent local noise regulations, and assurance should be granted aircraft currently in existence will not be forced into premature retirement to comply with noise standards in the future more severe than the current Stage 3. The Coalition appreciates this opportunity to offer its views and trusts its comments will be helpful to the Committee.

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MARY MARGARET WHIPPLE

October 8, 1990

The Honorable James L. Oberstar
Chairman, Subcommittee On Aviation
Committee On Public Works & Transportation
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Attached is a statement from Mary Margaret Whipple, Member, Arlington County Board, concerning the National Noise Policy that is before your subcommittee. This statement presents the views of the Arlington County Board, and it is requested that it be made a part of the official record of the hearings.

We thank you for the opportunity to comment on this important matter.

Sincerely,

Albert C. Eisenberg
Chairman

Attachments

cc: The Honorable Frank R. Wolf
The Honorable Charles S. Robb
The Honorable John W. Warner

STATEMENT FROM THE COUNTY BOARD OF ARLINGTON, VIRGINIA CONCERNING THE NATIONAL AVIATION NOISE POLICY UNDER CONSIDERATION BY THE HOUSE SUBCOMMITTEE ON AVIATION--October 8, 1990

My name is Mary Margaret Whipple and on behalf of the Arlington County Board, of which I am a member, I am taking this opportunity to provide comments to the House Aviation Subcommittee in its hearings on a National Aviation Noise Policy. Arlington is a member jurisdiction of the Metropolitan Washington Council of Governments' Committee On Noise Abatement at National and Dulles Airports (CONANDA), and we support the CONANDA position as articulated by its Chairman, Betty Ann Kane, earlier in these proceedings. I offer, at this time, some further comments on the form and content of a National Noise Policy, particularly as it should apply to airports in mature, developed areas. These comments are grouped under the headings, "Local Decision-Making," "Land Use Limits Versus Noise Source Controls," "Fleet Mix," and "Nighttime Operations."

LOCAL DECISION-MAKING

Over the years, airport proprietors have developed and implemented an array of noise mitigation procedures to control noise emissions at the source and to lessen exposure of populations to significant levels of aircraft noise. These measures were a necessary response at the local level to the pervasive problem of aircraft noise, and reflected the

accountability of airport proprietors to the affected populace. In many cases, these measures have evolved from a process of trial and error which has identified those noise mitigation procedures that work best in the localized environment of a particular airport. This initiative at the local level was in large measure driven by the lack of an appropriate federal response to the problem of aircraft noise which continues to this day. The real and enduring value of these local efforts at noise mitigation has been the interplay between airport proprietors and the local communities impacted by aircraft noise, and the freedom to tailor noise mitigation measures to local conditions.

Adoption of a National Noise Policy is long overdue, and presents the opportunity to establish a framework within which federal and local interests can be combined to achieve meaningful noise abatement. Those responsible for operating airports and those living and working in noise-impacted communities have a unique perspective on what is needed and what works in aircraft noise mitigation efforts. A National Noise Policy must not preempt this local input and decision-making role. On the contrary, it should take the form of minimum standards to be achieved, and support local efforts to exceed those standards with noise mitigation measures that have proven to be effective and sustainable from an operational and economic standpoint.

LAND USE LIMITS VERSUS NOISE SOURCE CONTROLS

Control of aircraft-generated noise can take two basic forms: noise can be reduced at the source by a combination of quieter technology and operational procedures, both on and off the ground; and perceived noise can be reduced by limiting the density of exposed populations through development limits in noise-impacted areas and by soundproofing of buildings.

Many airports operate in the midst of mature, developed communities with large populations exposed to high levels of aircraft noise. A National Noise Policy must recognize that for these airports there are very limited opportunities to reduce perceived noise, and the thrust of noise mitigation efforts has to be to reduce aircraft noise at the source. It must also be recognized that controlling noise at the source may require the imposition of operational limits such as the "Slot Rule" to achieve a reduction in noise exposure.

National Airport is a prime example of the necessity for operational limits, currently in the form of the "Slot Rule." The recently-completed FAR Part 150 Noise Compatibility Study for National Airport projects a shrinkage in the 65+ Ldn noise contours as Stage II aircraft are replaced with Stage III aircraft, but the extent of the reduction in noise exposure can be offset in part, and in some cases overwhelmed, by an increase

in flight operations. A comparison of the projected future for National versus Dulles Airports as identified in the Part 150 Studies is a case in point. The bulk of the decrease in noise exposure projected for National in future years is achieved by the combined effects of a greater proportion of Stage III aircraft in the fleet mix and the fixed level of commercial air-carrier operations resulting from the "Slot Rule." At Dulles Airport, where there are no capacity limits, the projected noise contours actually expand in spite of the increased proportion of Stage III aircraft in the fleet and other operational noise mitigation procedures. In this case, the reduction in noise achieved by the increased use of quieter, Stage III aircraft is overwhelmed by the increase in flight operations. This negative outcome could also be National's future if the slot restrictions are relaxed or eliminated. It is, therefore, imperative that the limitation on flight operations, as currently expressed in the "Slot Rule", be maintained at National Airport, and be an available tool to other airports in developed areas which experience high traffic demand.

FLEET MIX

Since a large decrease in sound energy is required to produce a marginal reduction in perceived noise, there is simply no better way to reduce noise impacts, short of curtailing flight operations, than to substitite the new generation of quieter, Stage III aircraft for Stage II aircraft. A National Noise

Policy must take the lead to accelerate the proportion of Stage III aircraft in the commercial air-carrier fleet mix, beyond what would otherwise be "normal" fleet turnover. This effort must also address the status of Stage II aircraft directly, by establishing a phaseout timetable for the elimination of such aircraft from the domestic fleet. Given the current production capacity for Stage III aircraft, the softening of travel demand, and the fuel efficiency offered by newer technology aircraft, it is time to eliminate Stage II aircraft from the domestic fleet. The only exception should be for those Stage II aircraft that have been re-engined so as to comply with Stage III noise standards. The Arlington County Board believes the December 31, 1999 deadline for phasing out Stage II aircraft recommended by CONANDA should be a central component of a National Noise Policy and is prudent and achievable. Furthermore, during the phaseout period, there should be no influx of Stage II aircraft into the domestic fleet. Accordingly, a National Noise Policy should preclude the re-registration of Stage II aircraft after June 1991 as recommended by CONANDA.

NIGHTTIME OPERATIONS

Commercial air-carrier flights at airports in mature, developed communities during the nighttime hours (10 P.M.-7 A.M.) should not be unrestricted. There is well-documented evidence that sleep interference results from aircraft noise well within the range of Stage III aircraft. This fact has been recognized

by the FAA in its noise modeling by the assignment of a 10 dBA penalty to nighttime flight operations, and by the "Nighttime Noise Rule" at National Airport that imposes noise limits for arriving and departing aircraft that many Stage III planes cannot currently meet. A National Noise Policy should not permit flight operations that persistently disturb the sleep patterns of a large number of residents in the communities surrounding commercial airports. A National Noise Policy must recognize that the concept of a 24-hour airport is not appropriate at many locations and must provide for the curtailment of nighttime activity by imposition of strict noise standards and/or limitations on flight operations.

IN CONCLUSION

The comments offered in this statement reflect our genuine concern with the proper balancing of interests in the development of regulations concerning the noise impacts of aircraft operations at commercial airports. Any policy defining the federal interest in regulating aircraft noise must give proper weight to the needs of airport proprietors and noise-impacted communities. Our local concerns and reference to National Airport have been mentioned by way of illustration of what should be the overall program focus. The environmental consequences of aircraft noise must not take a back seat to the economic consequences of noise regulation. In addressing this problem at the national level, we must craft policies reflecting a true

partnership of interests between the federal government, air carriers, airport proprietors, and local jurisdictions.

WRITTEN COMMENTS SUBMITTED BY
THE CITY OF NEWPORT BEACH
PRESENTED TO THE AVIATION SUBCOMITTEE
PUBLIC WORKS AND TRANSPORTATION

OCTOBER 4, 1990

I. INTRODUCTION

This document outlines the position of the City of Newport Beach, California, with respect to the issues that the House Subcommittee on Aviation will address in connection with its comprehensive review of federal aviation noise policy. Newport Beach believes that any legislation resulting from that review should preserve airport proprietors' longstanding authority to impose reasonable, non-discriminatory noise control measures that do not unduly burden interstate commerce. In particular, Newport Beach believes that a possible phase-out of Stage 2 aircraft does not justify depriving proprietors of the ability to fashion noise control measures that are tailored to unique local conditions. Nor should federally assisted noise abatement efforts deprive local communities of the responsibility and authority to determine appropriate land uses for areas near airports. Finally, Newport Beach believes that any new legislation must "grandfather" existing noise control programs, particularly those that were implemented pursuant to settlement agreements between airports and neighboring communities.

II. NATURE OF NEWPORT BEACH INVOLVEMENT IN AIRPORT NOISE CONTROVERSIES

Newport Beach is located in Southern California, immediately south of Orange County's John Wayne Airport ("JWA"). JWA is the only commercial airport in Orange County. Under prevailing weather conditions, commercial jet aircraft departing JWA take off directly over Newport Beach.

Commercial jet aircraft did not operate at JWA until 1967--long after most of the homes in Newport Beach under the flight path had been constructed. The introduction of jets at JWA sparked an often heated controversy that pitted Newport Beach and its residents against the proprietor of JWA, the County of Orange. The controversy erupted into litigation regarding noise levels near the airport and the County's plans for increasing the number of flights at the airport and the size of the passenger terminal and other airport facilities.

In 1982, Newport Beach obtained an injunction which prevented the County from proceeding with its expansion plans without complying with applicable environmental laws. In 1985, Newport Beach, Orange County, and two citizens groups reached an agreement settling their differences. The settlement agreement was embodied in a stipulated judgment approved, and entered, by a federal district court. The agreement, which is effective through the end of the year 2005, authorized an immediate increase in the number of flights at JWA and a second significant increase after construction of the new terminal. County controls on the permissible noise levels and permitted hours of operation were institutionalized and strengthened. The agreement also permitted the construction of a new passenger terminal and other airport facilities (sized to accommodate a specified maximum number of passengers) that the County felt were badly needed to serve the growth in Orange County air transportation demand. For their part, Newport Beach and the citizens group agreed to drop all legal challenges to the County's airport project. Finally, recognizing that JWA was too small to ever satisfy the burgeoning demand for air travel in Orange County, the agreement included provisions intended to facilitate the development of an additional airport to serve Orange County.

The JWA settlement agreement was a compromise in the truest sense of the word. From the perspective of Newport Beach, the City agreed to more flights at JWA (and, consequently, greater

noise, air pollution, and traffic impacts) than it wanted, but received binding, long term noise control measures and certainty as to the maximum level of flights and noise to which it would be subjected over the next twenty (20) years.

III. AIRPORT PROPRIETORS SHOULD REMAIN FREE TO TAILOR NOISE CONTROL MEASURES TO LOCAL CONDITIONS

Newport Beach's experience has forged our strong conviction that any national airport noise control policy should preserve airport proprietors' longstanding authority to adopt noise control measures. Newport Beach adamantly opposes proposals, such as the recommendations of the Aviation System Capacity Task Force ("Task Force proposal"), that include prohibitions or additional restraints on airport proprietors' authority to implement noise control measures. In particular, Newport Beach opposes efforts to prevent or further restrict airport proprietors from imposing noise control measures, such as those included in the JWA settlement agreement, that apply to Stage 3 aircraft.

Current law gives airport proprietors the power to adopt reasonable, non-discriminatory noise control measures that do not unduly burden interstate commerce and that are tailored to the particular nature of operations at the airport and the impact of those operations on surrounding communities. The flexibility inherent in this approach recognizes that the noise control measures best suited for a particular airport depend upon a variety of factors unique to that facility, such as the level and type of operations at the airport, the extent to which those operations impact surrounding communities, the nature of land uses in the vicinity of the airport, the history of the airport and neighboring communities, and the local geographic conditions.

Additional limitations on proprietors' authority to impose noise control measures would impose a straightjacket on airport operators that would prevent them from responding to local

needs and conditions. Instead, they would ensure that vastly different airports would be treated alike in terms of their ability to implement noise control measures regarding Stage 3 operations.

Every airport is unique. Airports such as Chicago O'Hare, Washington National, Indianapolis, and Burbank each present different noise mitigation considerations. Treating those and other airports alike for purposes of noise regulation ignores the profound differences between them as to the nature and impact of their operations and the local land uses, demographics, and geographic conditions. By ignoring those differences, additional limitations on proprietors' authority to impose reasonable noise control measures would frustrate, rather than further, the salutary objective of minimizing the adverse impact of airports on local communities.

Such limitations on proprietors' authority could not be justified as a quid pro quo for the mandated phase-out of Stage 2 aircraft. On the whole, Stage 3 aircraft may be less noisy than Stage 2 aircraft, but they are by no means quiet. Moreover, because the FAA's stage classifications consider the weight of aircraft in addition to their noise levels, certain Stage 3 aircraft are actually noisier than some Stage 2 aircraft. As a result, airport proprietors need the authority, in appropriate circumstances, to apply noise control measures to Stage 3 aircraft.

Nor is it acceptable to limit proprietors' authority to impose restrictions on Stage 3 aircraft by giving the FAA veto power over such restrictions, as suggested by the Task Force proposal. Under that proposal, the FAA could veto such restrictions if it concluded that they imposed an undue burden on interstate commerce. However, the Commerce Clause of the United States Constitution already prevents airport proprietors from adopting any regulations that unduly burden interstate commerce.

Federal courts are experienced in the resolution of these Commerce Clause issues, and both the FAA and any aggrieved private parties have a full opportunity to present their views in such litigation.

The FAA is not the appropriate forum for resolving Commerce Clause issues. Given the agency's predisposition to invalidate airport noise regulations, proprietors would simply be given a right to a mock trial before they are found guilty. The complexity of the legal and factual issues presented by airport noise regulations compels the conclusion that the validity of those rules be determined by courts and not through some administrative proceeding conducted by an agency of the executive branch of government. The Constitution gives courts the sole authority to resolve Constitutional issues.

Moreover, the Task Force proposal's assertion that the FAA review process shall be completed in a "timely manner" is mere wishful thinking. Similar FAA review of noise control plans developed pursuant to FAR Part 150 is often very time consuming. Even a statutory directive to complete such administrative reviews within a specific time period would be ineffective if the FAA is not provided with sufficient funding and staffing. The Task Force proposal fails to estimate or even address the cost of its suggested FAA review process.

IV. ANY ADDITIONAL LIMITATIONS ON AIRPORT PROPRIETORS' AUTHORITY TO IMPOSE NOISE CONTROL MEASURES WOULD SADDLE THE FEDERAL GOVERNMENT WITH ENORMOUS POTENTIAL LIABILITY FOR DAMAGES

Since the infancy of aviation in this country, a cornerstone of aviation law has been that local airport proprietors, and not the federal government or the airlines, are liable for any damages associated with noise from aircraft operations. This result has been justified on the basis of local

proprietors' authority to impose noise control measures to mitigate the impact of operations at their airports.

Creating additional limitations on airport proprietors' authority to impose noise control measures would upset this established allocation of the primary responsibility--and potential liability--for controlling airport noise. Local proprietors could not be held responsible for conditions that they were unable to control. That potential liability would necessarily be transferred to the federal government, because a statute restricting local proprietors' authority to control noise could not deprive aggrieved residents and property owners of recourse for damages relating to airport noise without violating the Fifth Amendment's prohibition against the taking of property without just compensation. It is also possible that the airlines themselves could become liable for aircraft noise.

The potential liability for such claims is enormous. The Task Force proposal acknowledges that the federal government would assume liability for damages attributable to airport proprietors' inability to impose desired restrictions on Stage 3 operations, but fails to analyze the amount of that liability.

Ironically, any proposal to eliminate local proprietors' authority to control noise could lead the federal government to attempt to minimize its liability by developing noise control measures for particular airports. Rather than eliminating a "hodgepodge" of local noise regulations, such a proposal might transfer the impetus for those regulations from local officials who are intimately familiar with local needs and conditions, to federal officials who do not possess the same familiarity with, or sensitivity to, local conditions. Newport Beach believes noise control measures are best left to local proprietors.

level of expanded operations permitted by the proposed improvements. Local communities will be reluctant to rely upon an unelected and distant federal bureaucracy--particularly one that is charged with the express statutory responsibility of promoting the expansion of air travel--to protect them from operations permitted by expanded facilities. This will inevitably delay, increase the cost of, and on occasion frustrate, the completion of new runways, passenger terminals, and similar airport projects.

VII. NO MAJOR CHANGES ARE REQUIRED TO FEDERALLY ASSISTED NOISE ABATEMENT PROGRAMS

Newport Beach does not believe that the federal program of assistance for noise abatement planning and programs requires any major changes. We oppose any changes that would interfere with local officials' authority to regulate the land uses in their communities. Local officials' familiarity with local conditions places them in the best position to weigh the various considerations impacting the most appropriate use for particular parcels of land. Moreover, imposing such restrictions on local officials' authority to control land uses would not accomplish the intended purpose of preventing the creation of land uses that are incompatible with nearby airports because nearly all airports are located in areas that are already extensively developed. In any event, current law contains strong disincentives against the creation or maintenance of incompatible uses near airports. See 49 U.S.C. App. Section 2101 et seq.

VIII. NO MAJOR CHANGES ARE REQUIRED TO THE STANDARDS OR PROCEDURES REGARDING AIRPORT LITIGATION

Newport Beach also does not believe that any major changes are required to the standards or procedures which govern airport noise litigation. Most such litigation is conducted pursuant to state law and procedure. Federal interference with the property rights involved in such litigation would impose

V. RESTRICTIONS ON AIRPORT PROPRIETORS' ABILITY TO REGULATE OPERATIONS BY STAGE 3 AIRCRAFT WOULD REDUCE OR ELIMINATE INCENTIVES FOR THE DEVELOPMENT OF QUIETER AIRCRAFT

Noise budgets, limits on certain Stage 3 operations, and other noise control measures existing today have created a strong inducement for the development of aircraft, such as the BAe-146, which are significantly less noisy than the minimum Stage 3 requirements. The benefits from the development of these quieter aircraft have been experienced nationwide.

Limitatiors on local proprietors' authority to regulate Stage 3 operations would reduce, and possibly destroy, any incentive for airplane manufactures to develop quieter aircraft. The permissible noise ceilings for Stage 3 aircraft would, in effect, become floors.

VI. LOCAL PROPRIETORS' AUTHORITY TO CONTROL NOISE FACILITATES AIRPORT IMPROVEMENTS

Opposition by a local community to proposed airport improvements, such as new runways or terminal facilities, is usually prompted by the community's concern that the proposed project will lead to the unbridled expansion of the airport. The airport proprietor's authority to impose reasonable noise control measures under existing law has often been used to allay the affected community's concerns and facilitate the completion of the airport improvements. The JWA settlement agreement's facilitation of physical improvements and expanded operations at John Wayne Airport--putting an end to nearly two decades of litigation--is a classic case in point.

Additional restrictions on local proprietors' authority to impose noise control measures would make it more difficult to complete needed airport improvements by depriving local communities of the assurance that the proprietor will be able to control the

substantial liability on the Federal government. In any event, there does not appear to be any widespread problem with the states' administration of these lawsuits.

IX. ANY NOISE POLICY AND LEGISLATION SHOULD GRANDFATHER EXISTING AGREEMENTS PREDICATED UPON LOCAL PROPRIETORS' AUTHORITY TO CONTROL NOISE

Airport controversies across the nation, like that involving John Wayne Airport, have often been resolved by settlements that are premised upon local proprietors' authority to control noise. Any noise policy or legislation, such as the Task Force proposal, which fails to grandfather such settlement agreements would destroy the legitimate expectations of the parties relating to the airport proprietors' authority to implement negotiated noise control measures. At a minimum, any settlement agreement or stipulated judgment predicated on local proprietors' authority to impose specific noise control measures must be exempted from any new statutory restrictions on proprietors' authority.

The Congress should avoid the enactment of retrospective legislation which impairs the obligations of a contract. The John Wayne Airport Settlement Agreement is a contract in the strictest sense and protects the property rights of thousands of Newport Beach residents. The Constitutional prohibition against laws retroactively impairing contracts applies only to the states but the concept is basic to civilized society and free market economies. Our citizens must have a sense of security that their agreements will be respected by the law and agreements between public entities deserve the highest degree of respect.

X. CONCLUSION

Newport Beach believes that the limitations on airport proprietors' ability to control noise that are already contained in

existing law effectively prevent unjustified regulations or those that unduly burden the national air transportation system. The existing system is not "broken" and does not need to be "fixed." Moreover, the repair proposed by the Task Force--significant restrictions on proprietors' ability to tailor noise control measures to local conditions--is not justified by a proposed phase-out of Stage 2 aircraft and would itself be counterproductive to the growth and efficient operation of the air transportation system.

Newport Beach urges the rejection of any efforts, like the Task Force proposal, that would impose additional restrictions on airport proprietors' authority to control noise. At a minimum, any settlement agreements or stipulated judgments premised upon airport proprietors' ability to impose noise control measures, including restrictions on Stage 3 operations, should be grandfathered from inclusion in any noise policy or legislation.

Rev 9/27/90

ADDITIONS TO THE RECORD

Air Freight Association

1710 Rhode Island Avenue, N.W., 2nd Floor
Washington, DC 20036 (202) 293-1030

September 28, 1990

Honorable James L. Oberstar, Chairman
Subcommittee on Aviation
Committee on Public Works and Transportation
House of Representatives
2251 Rayburn House Office Building
Washington, D.C. 20515

Re: Federal Aviation Noise Policy

Dear Mr. Chairman:

On behalf of the members of the Air Freight Association, I would like to thank you for holding hearings on the need for a federal aviation noise policy and for including a cargo panel among those testifying. We appreciated the opportunity to present our concerns and proposals.

At the same time, as a member of the Noise Working Group of the Aviation System Capacity Task Force (and, as of September 21, 1990, a member of the Task Force itself), I am compelled to take issue with the testimony submitted by the Task Force on September 27, 1990. Contrary to the testimony submitted, there has been absolutely no consensus reached by the Noise Working Group on the aircraft noise issue. Indeed, the Working Group has not even met to discuss the current proposals and comments on the proposals are not even due to be submitted to the Task Force Chairman until September 28, 1990 -- days after the "consensus" was presented to the FAA Administrator and to your Subcommittee. Therefore, to avoid being accused of presenting a position to your Subcommittee which is different from that of the Working Group on which I serve, I am taking the liberty of enclosing my September 28, 1990, letter to the Noise Working Group.

We look forward to working with you on this important and complex issue; if you or your staff needs any further information from our segment of the air transportation industry, please do not hesitate to contact me.

Sincerely yours,

Stephen A. Alterman

Enclosure

Air Freight Association

1710 Rhode Island Avenue, N.W., 2nd Floor
Washington, DC 20036 (202) 289-1000

September 28, 1990

Mr. Charles K. Bautz
Manager, Performance and Analysis
Delta Air Lines, Inc.
P.O. Box 20531
Hartsfield Atlanta International Airport
Atlanta, GA 30320

Re: Noise Working Group

Dear Charlie:

In response to your memo of September 5, 1990, following are my comments with respect to the current version(s) of the Working Group recommendations. Initially, however, let me express my concern with the timing of the release of the Working Group proposals. Your letter requests comments by September 28, 1990, so that the support level can be presented to the System Capacity Task Force on October 4-5, 1990. Nevertheless, prior to receipt of comments (indeed without the Noise Working Group ever discussing the current draft), the proposals were presented to the FAA and to the Aviation Subcommittee of the House of Representatives as a consensus of our group. In my opinion, no consensus exists and the comments which follow will indicate the details of our objections.

The basic objections of the air freight industry to the present Working Group draft are as follows:

1. As a general matter, we feel that the Stage 2 phase-out schedule is too confusing; we should pick a date (we have no objection to the year 2000) and stick to it.

2. Absolutely no protection is afforded to Stage 2 equipment during the Stage 3 phase-in period. As a practical matter, this lack of protection renders the mandatory phase-in date a useless semantic exercise since local jurisdictions would be free to impose Stage 2 restrictions at any time. From the air freight industry perspective, the ability to operate Stage 2 equipment free from local control up to the year 2000 is absolutely necessary if our current

distribution system is to be maintained.

3. At the present time, airlines affected by local restrictions are barred from attacking these rules in the federal courts on all but Constitutional grounds. We must be given a private right of action to test illegal actions if the FAA is unable or unwilling to do so.

4. We disagree that existing local restrictions should automatically be grandfathered. At the very least, they should be submitted to the FAA for approval.

5. It is absolutely necessary that members of the air freight industry be able to add to their fleets with Stage 2 equipment during the phase-in period. At the same time, each of the aircraft so added will be converted to Stage 3 standards by the mandatory phase-out date.

These concerns have been expressed to the Noise Working Group on numerous occasions by me and by Julie Ellis of Federal Express. Nevertheless, in spite of the fact that there clearly is no consensus on these issues within the Noise Working Group, the current proposals have seemingly taken on a life of their own. We therefore urge that all parties who have received the recommendations also receive copies of any comments filed in opposition.

Thank you very much for your attention to this matter.

Sincerely yours,

Steve

Stephen A. Alterman

ECONOMIC ANALYSIS OF STAGE 3 RULES 1991-2000

COST TO U.S. CARRIERS

AUGUST 27, 1990

Airline Capital
Associates, Inc.

ECONOMIC ANALYSIS OF STAGE 3 RULES 1991-2000

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AIRLINE CAPITAL ASSOCIATES, INC.
AUGUST 27, 1990

ECONOMIC ANALYSIS OF STAGE 3 RULES 1991-2000

OUTLINE AND ASSUMPTIONS

STAGE 3 RULES

Stage 3 Rules are assumed to require all aircraft operators in the U.S. to convert 100% of their fleets to Stage 3 aircraft by the year 2000. Such compliance shall be accomplished in intervals, according to the following schedule:

-25% of total fleet by 12/31/92;
-50% of total fleet by 12/31/94;
-75% of total fleet by 12/31/97;
-100% of total fleet by 12/31/99.

Exemptions are granted for widebody aircraft. The cost of complying with these rules are summarized in Table 1.

UNITS REPLACED/MODIFIED

The number of aircraft to be replaced or modified under the proposed Stage 3 Rules is equal to the total number of Stage 2 aircraft in current operation by U.S. carriers and cargo operators, excluding widebody aircraft. Aircraft that are greater than 25 years old by the end of 1994 are excluded on the assumption that these aircraft would normally be retired during such time frame. As of 1/1/90, there were 1,976 Stage 2 aircraft that would be affected by these rules, of which 1,902 are projected to be less than 25 years old by the end of 1994. This data is provided in more detail in Table 3.

The modification or replacement of existing Stage 2 aircraft to Stage 3 is assumed to proceed according to the following schedule:

-25% of existing Stage 2 aircraft by 12/31/92;
-50% of existing Stage 2 aircraft by 12/31/94;
-75% of existing Stage 2 aircraft by 12/31/97;
-100% of existing Stage 2 aircraft by 12/31/99;

Aircraft that are projected to reach thirty years of age between the end of 1995 and the end of the conversion period are replaced with new aircraft or modified on a first-in, first-out basis, such that each unit shall be replaced or modified at least five years before the end of its economic life of 30 years. All other units are assumed to be replaced or modified in increments producing Stage 3 compliance for the total fleet of 1,902 aircraft according to the above schedule. The proposed replacement/modification schedule is outlined in Table 4.

For purposes of this analysis, it is assumed that sufficient capacity exists with airframe manufacturers to produce the required number of new aircraft to replace the existing Stage 2 fleet during the conversion period and according to the above schedule. The number of annual modifications (hush kits and re-engining) is within the available capacities of each of the modifiers, as outlined in Table 5.

COST OF REPLACEMENT/MODIFICATION

The costs of complying with the proposed Stage 3 Rules are calculated under two different scenarios: forced replacement of all affected aircraft with new aircraft and modification of all existing, affected aircraft.

Forced Replacement

Under the Forced Replacement scenario, the cost is computed to be the present value of accelerating aircraft purchases to comply with the proposed Stage 3 rules. This is the difference between the cost of replacing all aircraft on an economic life basis of 30 years and the cost of replacing all these aircraft by the year 2000.

The cost of both economic and accelerated replacement includes the capital cost of new aircraft less the after tax operating savings of new aircraft and the after tax residual values of the replaced aircraft at the time of sale. Operating cost savings include fuel, maintenance, hull insurance and cockpit costs plus the depreciation tax benefits of the new aircraft.

Capital costs of new aircraft are based on a seat-for-seat replacement using a generic Stage 3 replacement unit. The figures used in this analysis are from the American Airlines study ("Economics of Stage 2 Aircraft Replacement," July 19, 1988) which is based on the manufacturers' list price (1988) for the B737-400, MD-82 and A320-200 aircraft. The cost per seat, in 1990 dollars, is $196,742.

Operating cost savings are calculated applying a savings factor to the actual 1989 aircraft cash operating expenses per available seat-mile (ASM) for each aircraft type that is replaced. This savings factor is taken from the American Airlines study that computed percentages of savings based on the differences in operating costs between the generic Stage 3 replacement aircraft and the Stage 2 aircraft retired. These savings factors are detailed in Table 6.

Depreciation of the new aircraft is calculated using an ACR life of 15 years and the 150% declining balance method, switching to straight-line in the eighth year. It is assumed that all replaced aircraft are fully depreciated for tax purposes at the time of replacement.

Residual values for aircraft that are retired at the end of an economic life of 30 years are based on the most recently projected 30th year residual values for each aircraft type, with no accelerated depreciation due to Stage 3. Residual values for accelerated aircraft retirements are based on the average value projected for 1990-1999 for each aircraft type, with accelerated depreciation due to Stage 3. The source for this data is Avmark's Transport Aircraft Values, Third Revision.

A summary of the costs of replacing Stage 2 aircraft under the proposed rules is provided in Table 2.

Modification

Under the Modification scenario, the cost of complying with the proposed Stage 3 rules is equivalent to the discounted cost of modification, less depreciation tax savings, the change in operating costs and the impact on residual values resulting from the modification. Both re-engining and hush-kit options are included in Table 2.

Capital costs are based on recent pricing available for current and planned re-engining and hush-kit programs. These costs are provided in Table 5.

Depreciation is based on five year ACR life, doubling declining balance, for both hush-kits and re-engining.

Operating cost savings result from re-engining only and include fuel burn improvement of 11% and engine maintenance expense savings of $60.00 per flight hour in the first year (declining to zero in year six). Fuel degradation of 3% is assumed for aircraft modified with hush-kits.

The impact on residual values due to modification is computed as the difference between the 30th year values with and without accelerated depreciation due to Stage 3 (from Avmark's Transport Aircraft Values), plus the original (1990) cost of modification. Aircraft are assumed to be retired at the end of the 30th year. In addition, engines removed during re-engining are assumed to be sold for a pre-tax value of $600,000 each (1990). The price of engines is reduced each year thereafter by a factor of 5% of the 1990 value.

The costs of modification by aircraft type are summarized in Table 2.

OTHER ASSUMPTIONS APPLICABLE TO REPLACEMENT AND MODIFICATION

- Discount rate is 15%.
- Capital and operating costs escalate 6% annually.
- Tax rate of 34%; no carryover benefits.
- End of year capital outflow; operating savings in succeeding years.
- Present value as of 1/1/91.
- Constant aircraft utilization.
- No change in traffic; all new aircraft to be delivered in this analysis are for replacement.
- Revenue benefits from re-engining or replacement (increased payload, range) are not included.

TABLE 1

COST OF STAGE 3 RULES 1991-2000
SUMMARY

($ in millions)

	NUMBER OF AFFECTED AIRCRAFT	FORCED REPLACEMENT	MODIFICATION
727-100	263	$198	$178
727-200	249	680	101
727-200 ADVANCED	571	2,623	857
737-100 & -200	138	272	95
737-200 ADVANCED	255	989	390
DC9-10	91	113	59
DC9-30	216	264	111
DC9-40	5	7	3
DC9-50	61	161	45
DC8-60	8	(57)	8
F-28*	45	34	34
TOTAL**	1,902	$5,284	$1,880

* No modification options are projected to exist for the F-28 aircraft; cost of modification represents replacement cost.
** BAC1-11 aircraft are excluded because no such aircraft are currently operated by U.S. carriers.

TABLE 2

COST OF STAGE 3 RULES 1991-2000
COST DETAIL BY AIRCRAFT TYPE

($ in millions)

	727-100	727-200 Non-Adv	727-200 Advanced	737-200 & -100	737-200 Advanced	DC9-10	DC9-30	DC9-40	DC9-50	DC8-60	F28*	Total
FORCED REPLACEMENT WITH NEW AIRCRAFT												
Capital Cost	$1,397	$1,379	$6,777	$435	$2,624	$403	$1,230	$23	$466	$71	$155	$14,960
Depreciation Tax Savings	202	200	981	63	380	58	178	3	67	10	22	2,165
COE Savings (After Tax)	908	471	2,312	125	753	211	589	9	182	78	99	5,737
After Tax Residual	89	29	861	(24)	502	21	199	3	56	40	0	1,775
Net Cost	$198	$680	$2,624	$272	$989	$113	$264	$7	$161	($57)	$34	$5,284
MODIFICATION OF EXISTING AIRCRAFT												
Capital Cost	$549	$263	$2,480	$267	$504	$149	$284	$5	$64	$13	$155	$4,732
Depreciation Tax Savings	138	66	624	67	127	37	71	1	16	3	22	1,173
Fuel Savings (After Tax)	(18)	(34)	530	(9)	(54)	(10)	(26)	(0)	(9)	(2)	99 **	467
Maintenance Svgs (AT)	5	0	72	0	0	0	0	0	0	0	0	77
Gain, Engine Sales (AT)	21	0	157	0	0	0	0	0	0	0	0	178
After Tax Residual	225	130	241	114	40	62	128	2	12	4	0	957
Net Cost	$178	$101	$857	$95	$390	$59	$111	$3	$45	$8	$34	$1,880
MODIFICATION BETTER/ (WORSE) THAN REPLACEMENT	$20	$579	$1,767	$177	$599	$54	$153	$4	$116	($65)	$0	$3,404

* No modification options are projected to exist for the F28 aircraft; cost of modification represents replacement cost.
** Includes fuel, maintenance, cockpit and insurance costs.

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U.S. CARRIERS STAGE 2 FLEETS AT 1/1/90*
ECONOMIC REPLACEMENT

TABLE 3

In Service	Year Retired	727-100	727-200 Non-Adv	727-200 Advanced	737-200 & -100	737-200 Advanced	DC9-10	DC9-30	DC9-40	DC9-50	DC8-60	F28	Total
1962	1992	1	0	0	0	0	0	0	0	0	0	0	1
1963	1993	17	0	0	0	0	0	0	0	0	0	0	17
1964	1994	56	0	0	0	0	0	0	0	0	0	0	56
1965	1995	60	0	0	0	0	5	0	0	0	1	0	66
1966	1996	100	0	0	0	0	44	0	0	0	2	0	146
1967	1997	78	17	0	2	0	36	37	0	0	2	0	172
1968	1998	21	105	0	71	1	6	54	1	0	2	0	261
1969	1999	2	77	0	58	1	0	39	0	0	0	0	177
1970	2000	1	35	0	7	1	0	20	0	0	1	0	65
1971	2001	1	13	19	0	0	0	15	0	0	0	6	54
1972	2002	0	2	29	0	0	0	0	0	0	0	2	33
1973	2003	0	0	55	0	2	0	0	0	0	0	3	60
1974	2004	0	0	18	0	4	0	9	2	1	0	1	35
1975	2005	0	0	40	0	3	0	2	2	10	0	4	61
1976	2006	0	0	43	0	4	0	3	0	13	0	4	67
1977	2007	0	0	55	0	8	0	0	0	15	0	0	78
1978	2008	0	0	78	0	19	0	1	0	9	0	0	107
1979	2009	0	0	87	0	30	0	1	0	7	0	2	127
1980	2010	0	0	82	0	21	0	13	0	5	0	3	124
1981	2011	0	0	42	0	35	0	6	0	1	0	4	88
1982	2012	0	0	9	0	35	0	8	0	0	0	2	54
1983	2013	0	0	7	0	30	0	8	0	0	0	0	45
1984	2014	0	0	7	0	41	0	0	0	0	0	0	48
1985	2015	0	0	0	0	3	0	0	0	0	0	6	9
1986	2016	0	0	0	0	5	0	0	0	0	0	8	13
1987	2017	0	0	0	0	12	0	0	0	0	0	0	12
Total All A/C		337	249	571	138	255	91	216	5	61	8	45	1,976
Total 1995-2017		263	249	571	138	255	91	216	5	61	8	45	1,902

* Represent aircraft in current operation; excludes BAC1-11 because no such aircraft are currently operated by U.S. carriers.
Source: AISL Turbine Airline Fleet Survey as of 1/1/90.

TABLE 4

U.S. CARRIERS STAGE 2 FLEETS AT 1/1/90
REPLACEMENT/MODIFICATION 1991-2000

Year Replaced/ Modified	REPLACED/ RE-ENGINED		REPLACED/HUSHED													
	UPS 727-100	727-200 Advanced	727-100	727-200 Non-Adv	727-200 Advanced	737-200 & -100	737-200 Advanced	DC9-10	DC9-30	DC9-40	DC9-50	DC8-60	F28	Total	Cum. Total	Percent of Affected Aircraft
1990	2	37	19	0	0	0	19	5	18	0	0	1	0	101	101	
1991	2	37	41	0	0	0	19	44	18	0	0	2	0	163	264	
1992	6	38	90	0	0	0	20	36	18	1	0	2	0	211	475	25%
1993	15	46	63	17	10	17	19	6	27	0	4	2	0	226	701	
1994	1	47	14	105	10	22	19	0	27	0	5	1	0	251	952	50%
1995	1	36	2	77	9	58	18	0	40	0	5	0	0	246	1,198	
1996	1	36	1	35	9	7	18	0	15	0	5	0	0	127	1,325	
1997	1	36	1	13	9	0	18	0	18	0	5	0	0	101	1,426	75%
1998	1	68	0	2	37	17	52	0	18	2	18	0	22	237	1,663	
1999	2	69	0	0	37	17	53	0	17	2	19	0	23	239	1,902	100%
Total	33	450	231	249	121	138	255	91	216	5	61	8	45	1,902		
Modification:	ROLLS ROYCE/DEE HOWARD	VALSAN	FEDEX	FEDEX	FEDEX	NORDAM	NORDAM	ABS/ NORDAM	ABS/ NORDAM	ABS/ NORDAM	ABS/ NORDAM	STG 3/ UAS/ BURBANK	--			

TABLE 5

STAGE 2 MODIFICATION PRODUCTION SCHEDULE

	1991	1992	1993	1994-2000	TOTAL 1991-2000	PROJECTED COST-1990 ($000)
727						
VALSAN	96	96	96	120	1,128	$7,700
ROLLS ROYCE/DEE HOWARD	--	12	24	24	204	$10,000
FEDEX	192	288	288	288	2,784	$1,546
Total	288	396	408	432	4,116	
737						
NORDAM	19	120	120	120	1,099	$3,000
DC 9						
ABS	48	72	72	72	696	$1,185
NORDAM	--	48	72	72	624	$2,500
Total	48	120	144	144	1,320	
DC 8						
STAGE 3 PARTNERS	6	12	12	12	114	$2,000
BURBANK	12	18	18	18	174	$2,000
UAS	6	12	12	12	114	$1,500
Production Capacity	24	42	42	42	402	
TOTAL MODIFICATION CAPACITY	379	678	714	738	6,937	

F28, 747 and DC-10 aircraft have not been included due to no current programs in effect and Stage 3 exemption for widebodies.

TABLE 6

1989 OPERATING FACTORS

A/C Type	Number of A/C @ 1-1-90	Avg. No. Seats	Revenue Block Hrs per Day	Fuel Burn/Hr (Gallons)	Cash Operating Expenses per ASM	COE/ASM Savings	Revenue A/C Miles per Year	Residual Values at End of Life ($ thousands)	
								No Stg 3 Rules	Stage 3 Rules
727-100	337	114.8	8.1	1,149	0.04549	39.5%	1,002,543	1,300	700
727-200	249	148.1	9.3	1,265	0.03458	23.0%	1,188,621	2,200	1,100
727-200A	571	148.1	9.3	1,265	0.03458	23.0%	1,188,621	2,300	1,200
737-100 & 200	138	110.5	9.1	797	0.03502	21.6%	1,051,328	1,700	600
737-200A	255	110.5	9.1	797	0.03502	21.6%	1,051,328	2,400	1,300
DC9-10/15	91	75.8	7.9	761	0.05296	32.1%	854,390	1,100	400
DC9-30	216	103.5	8.5	822	0.04441	32.1%	930,905	2,600	900
DC9-40	5	107.0	8.2	862	0.04102	32.1%	854,494	2,600	1,400
DC9-50	61	123.3	8.0	930	0.03989	32.1%	846,768	2,700	1,500
DC8-62/63	8	158.3	7.8	1,800	0.07215	32.1%	1,317,903	6,300	6,300
F28	45	66.4	8.3	647	0.05917	38.3%	777,841	0	0

Sources: Number of A/C: AISL Turbine Airline Fleet Survey as of 1/1/90.
Residual Values: Transport Aircraft Values 1970-2010, Avmark, Inc., as of 12/31/89.
COE Savings/ASM: Economics of Stage 2 Aircraft Replacement, American Airlines, July 18, 1988.
All other data: Quarterly Aircraft Operating Costs & Statistics, Avmark, Inc., 1989.

Scotch Plains/Fanwood Citizens Against Aircraft Noise
P. O. Box 163 Scotch Plains, NJ 07076

This testimony is submitted on behalf of (the) Scotch Plains/Fanwood Citizens Against Aircraft Noise (SP/F CAAN). This group was formed in the summer of 1989 for the purpose of obtaining relief from aircraft noise, and the associated chemical pollution and safety hazards which are logical by-products of the concentrated daily flights over our towns.

Our testimony is not technical in nature, for we are not technical experts. It is not legal for we are not lawyers. It is simply the testimony of average people from New Jersey which illustrates the plight of small towns that are being systematically destroyed by an arrogant bureaucracy totally insensitive to the environmental impact of its actions.

The towns of Scotch Plains and Fanwood are located in Central New Jersey approximately six miles southwest of Newark Airport as the crow flies. The towns, which are almost entirely residential, cover an area of eleven square miles and have a combined population of approximately 30,000.

Our towns were not initially affected by the Expanded East Coast Plan since the flight paths were not directed our way. In fact, most residents were unaware that the EECP even existed, although as we later discovered, our neighbors to the east (Cranford) had been subjected to a constant bombardment since the EECP was initiated in February 1987.

Our nightmare began on June 1, 1989 when the FAA decided to solve the Cranford problem by simply rerouting the same traffic, at the same altitudes, over our towns. As a result, Scotch Plains/Fanwood, which had never before had scheduled overflights, immediately received 360 aircraft per day, flying on one path, at altitudes as low as 2500 feet, averaging 5000 to 6000 feet and rarely exceeding 10,000 feet. The noise level was appalling. These overflights started at 6:00 A.M. and continued until midnight. At midnight, air freight traffic began and continued sporadically throughout the early morning hours.

When we attempted to find out what was happening, the FAA initially denied that any route changes had been made! The Agency later admitted that there had been some "minor rerouting." FAA officials completely stonewalled requests for data on flight frequency, altitudes, and noise levels. We discovered later that this was the same strategy they had used with Cranford during that town's two-year battle against overflights. Public meetings were held with the FAA during the summer of 1989, in which the FAA stated disingenuously that "they did not realize" the aircraft would be flying over our towns, and, later, that the altitudes were such that "the aircraft would be seen but not heard." Both statements were false!

In October 1989, we obtained some relief when the FAA rerouted northbound traffic. This change was made solely for operational reasons since the air traffic controllers had complained of the "handcuffing" effect of having to route aircraft south and west of Cranford before heading them to their northern destinations. (We obtained this information through Freedom of Information Act requests). Even with this change, the FAA was still daily routing 230 aircraft over our towns on a single path at low altitudes and deafening noise levels.

On January 11, 1990, after receiving a mounting stream of complaints from citizens and local, state, and federal representatives, the FAA implemented another change which it had assured us would remove two-thirds of the overflights. This was to be accomplished by broad fanning of air traffic over a wide area so that no one town, such as Scotch Plains/Fanwood would be disproportionately impacted. The fanning plan did not produce the promised relief. Aircraft were sporadically fanned out in varying degrees, depending on the particular air traffic controllers who were on duty. The Eastern Regional Administrator publicly admitted he could not guarantee the fanning because of difficulties with the controllers. But even when the fanning prescribed by the FAA was followed, virtually all of the aircraft were flying within the boundaries of our towns. Once again the FAA had deceived the public and its elected representatives! Even worse, the FAA Eastern Regional Administrator now denies that he ever made this commitment.

It is important to note that the FAA does not have the computer technology to chart flight paths, and has no noise monitors in outlying residential areas. By its own admission, it depends on citizen reaction to determine the location and effect of flight path changes. However, for the entire tri-state area the Agency provides only one New York noise complaint number. This complaint line is often inoperative; the telephone line is busy or the tape is full. Worse, the Agency then cites complaint statistics to support claims of minimal impact.

To illustrate the breadth of concern, in March 1990 the Mayor of Scotch Plains received petitions from over 1400 of 6000 households representing and signed by about 4,000 residents which condemned the FAA and demanded relief. This represents almost 20% of the township and still probably understates the extent of the impact. The FAA has been presented with these petitions (along with others gathered by SP/F CAAN numbering about 1000 signatures). The FAA has refused to divulge its complaint log, but noise complaints have increased five-fold since July 1989, based solely on calls to the Newark Airport complaint number. Over half of these calls are from Scotch Plains/Fanwood. Thus, the FAA is well aware of the extent of the problem. But as recently as September 14, 1990, the Scotch Plains Town Council was advised by Secretary Skinner's office that the Secretary had been informed (presumably by the FAA Eastern Regional Administrator) that "complaints were limited to four or five residents of Scotch Plains." The list of FAA deceptions goes on and on.

Page 5.

We have taken the valuable time of this Subcommittee to describe the serious problem faced by towns such as ours and to illustrate the difficulties in dealing with the FAA because as members of Congress you should be aware of what you and your constituents will face in the future. The environmental disaster inflicted on Scotch Plains/Fanwood is repeated in varying degrees throughout New Jersey. It is the result of allowing an unbridled FAA bureaucracy to develop and implement major programs without benefit of public hearing and without benefit of legally required environmental impact studies. And worse, it displays a total disregard for the checks and balances so carefully built into our system of government. It is shameful that the administrative branch of our government should be permitted to shrug off our elected representatives. The FAA has been criticized by the G.A.O. and condemned for its lack of substantive response by Governor Florio, Senators Bradley and Lautenberg, Members of Congress Rinaldo, Roukema, Courter, and Dwyer to name just a few; and a host of state and local representatives. All have pleaded for relief for our state and our towns. All to no avail! The FAA appears to be accountable to no one.

We urge you to thoroughly examine not only the impact of the EECP, but also the policies, procedures, and accountability of the FAA. We believe you will find, as we have, that this is a bureaucracy which is out of control and must be reined in. We plead with you to demand that a drastic revision be made to the EECP in order to remove this blight from New Jersey.

Pamela Barsam-Brown, Executive Director
Scotch Plains/Fanwood Citizens Against Aircraft Noise
201-233-0611

BEFORE THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON AVIATION

COMMENTS OF THE CITY OF LONG BEACH REGARDING FEDERAL AVIATION NOISE POLICY	)

COMMENTS

OF

THE CITY OF LONG BEACH

JEFFREY A. KELLOGG, Vice Mayor
JOHN R. CALHOUN, City Attorney
ROGER P. FREEMAN, Deputy City Atty.
333 West Ocean Boulevard, Ste. 1100
Long Beach, California 90802

September 27, 1990

EXECUTIVE SUMMARY

The City of Long Beach, like many airport operators, is keenly interested in the issue of noise. The City has long been active in developing regulations intended to reduce the impact of noise on the surrounding community. The City is also involved in litigation with homeowners living around the Airport who assert that noise from aircraft operations has damaged their properties by reducing them in value. The City has successfully defended one set of suits in this area, but lawsuits involving over 700 indvidual properties remain to be tried.

1. Based on the experience of the City of Long Beach in operation of its Airport, and what we understand to be the experience at neighboring airports in Burbank and Orange County, California, it seems clear that there are siginificant benefits to be derived from eliminating Stage 2 aircraft at any given airport and replacing them with Stage 3. These benefits are measurable both in terms of noise reduction and increased capacity. Long Beach would not benefit from a Stage 2 phase out since the fleet at Long Beach Airport is already all Stage 3.

2. Actions by local airport proprietors to restrict aircraft operations are presently reviewable under the Equal Protection Clause, the Due Process Clause and the Commerce Clause of the United States Constitution. These provisions of the U. S. Constitution provide substantial protection for

the national interest and yet provide a fair test which also protects the interest of the local airport proprietor. So long as the current thinking of the U. S. Supreme Court in interpreting these three provisions is followed, there is no need for a new standard. If, however, the federal government wishes to review local noise control rules under a different standard or a different reading of these constitutional provisions than what is supplied by the United States Supreme Court, or if Congress enacts regulations affecting the review of these regulations, then it is clear that a new standard needs to be established and that standard needs to explicitly state that airport operators are permitted to establish restrictions including single event noise limits at their airport which limit their liability and which reduce cumulative noise to a level of 65 CNEL or 65 LDN.

3. If there were to be a national standard, it should follow the pattern in the Baker and Institoris cases. A statute of limitations for inverse condemnation damages should be specified. The right of airport operators to acquire prescriptive easements should be specified. The time limits, if any, in which nuisance damages would be applicable should be specified. The regulation should specify which nuisances are continuing or permanent. It is suggested that the California rule of continuing nuisance flies in the face of all previously existing law and that the appropriate standard is that airports are permanent nuisances.

Finally, a standard for liability should be established, such as 65 CNEL or 65 LDN. In addition to this, it may be appropriate to specify that even if a prescriptive avigation easement has been acquired at some point in time, increases in cumulative noise of 1.5 decibels would result in renewed liability. This is consistent with a new California statute.

4. Actions which tend to increase capacity or noise will have adverse environmental impacts. Environmental ills have economic costs. Increasing capacity may be economically beneficial for some. Regulations which reduce noise may impose some incidental economic costs in some areas in order to achieve environmental benefits. Conversion to an all Stage 3 fleet will have economic costs for equipment, environmental benefits in noise reduction and at least on a tail for tail basis, a benefit in reduced fuel cost and usage (though this may be counterbalanced by increased operations).

5. The City of Long Beach has no specific comment on airspace regulations.

6. There is doubt about the efficiency of land use actions to provide real environmental benefits in built up areas near airports, though such benefits may be significant as advanced planning to avoid construction of residences near airports. Any costs of land use efforts or sound attenuation should be borne by the federal government or the users of the system.

INTRODUCTION

The City of Long Beach is the owner and operator of very active airport serving both general aviation and commercial aviation. Over much of the last twenty years, the Airport has been one of the busiest general aviation airports in the United States. In the last ten years, there has been steady growth, partly as a result of litigation, in the number of air carrier jet flights and in the number of passengers carried from the Airport. Today, there are forty-one scheduled air carrier flights, four of which are air cargo flights. The Airport presently serves approximately 1.3 million annual passengers.

The Airport is located near the geographic center of the City and is surrounded on three sides by residential development. That residential development is of approximately the same age as the Airport. This is not one of those cases where discussion of which came first - the Airport or the residents - really makes any difference.

Since the beginning of the use of jet transports for air carrier service at the Airport in the early 1970's, there has been steadily increasing community opposition to noise generated from operations at the Airport. The residential community is very close to the Airport and is significantly affected by the operations. Complaints have taken the form over the years of political action, including recall of City Council members, many public hearings and

heavily attended public meetings and has led ultimately to litigation between the City and a large number of homeowners in regard to the noise at the Airport. The City has successfully defended those cases which have gone to trial, but cases involving more than 700 individual properties remain to be tried.

During the period beginning in 1981, the City of Long Beach has attempted to respond to the community's complaints by developing a series of ordinances designed to regulate the noise of operations at the Airport in an effort to make the Airport and the community compatible with each other. Each of these ordinances has, at the same time, the effect of recognizing that as quieter aircraft were introduced, it would be possible to have more operations. The City Council believes it has drawn the balance of decreasing noise and increasing air carrier operations as carefully as it could be done in what is admittedly an unscientific process. Needless to say, the air carriers have not agreed, and the City and the airlines have been constantly in litigation over the City's noise regulations since 1983.

In 1988, a U. S. District Judge held the City's then current noise regulations to be unconstitutional on the basis that they violated the Equal Protection Clause and unduly burdened interstate commerce. That decision is now on appeal. The matter will be reargued next month.

The City has also done a Part 150 Study under the auspices of the Federal Aviation Administration. That Study, based on technical analysis and community participation, proposed a series of noise mitigation measures which were later embodied into the regulations which were litigated in 1988. The City's proposed regulations in the Part 150 Study were without exception disapproved by the Federal Aviation Administration, demanding scientific certainty and other elements of review which far exceed what a court would require, making approval impossible.

During this same period, the cumulative noise measured in CNEL (the substantial equivalent of the LDN standard used by FAA), has decreased from a very large 65 CNEL contour with a 70 CNEL contour affecting the residential community in 1979 to the present situation where almost no property is affected by 65 CNEL. Most of this reduction in noise is a result of replacing Stage 1 and 2 aircraft with Stage 3 aircraft which would not have occurred without the City's regulations.

In the context of this experience, the City of Long Beach believes that it has a unique background upon which to comment upon the issues raised by the Committee. Those issues will be addressed one at a time in this memorandum.

I. Federal Noise Emissions Standards

Based on the experience of the City of Long Beach in operation of its Airport, and what we understand to be the experience at neighboring airports in Burbank and Orange County, California, it seems clear that there are siginificant benefits to be derived from eliminating Stage 2 aircraft at any given airport and replacing them with Stage 3. These benefits are measurable both in terms of noise reduction and increased capacity. As an example of the noise reduction which can be achieved by conversion from Stage 2 to Stage 3 aircraft in the air carrier fleet, while increasing the passenger carrying capacity within any given amount of noise, the Long Beach experience is instructive.

In 1979, there were approximately ten daily scheduled air carrier flights. These were all conducted by Stage 1 and Stage 2 aircraft. In addition, there were some charter operations and McDonnell Douglas manufacturing operations, all of which were Stage 1 or Stage 2. The cumulative noise impact area of the Airport was such that the 70 CNEL contour extended a short distance into the surrounding residential community. The 65 CNEL contour extended much further. Today, there are forty-one scheduled air carrier flights each day in addition to a small number of charter operations and McDonnell Douglas manufacturing operations. All of these operations are conducted by Stage 3 aircraft. Notwithstanding this much greater level of air carrier operations, the cumulative noise impact of airport operations is

such that today the 65 CNEL contour extends only a small distance into the surrounding residential community and the 70 CNEL contour is entirely within the airport boundary. Long Beach could not benefit from a Stage 2 phase-out since the fleet at Long Beach Airport is already all Stage 3.

Similar experiences have occurred at Orange County John Wayne Airport, where the number of air carrier flights was forty one in 1982 and is expected to be over 100 per day within a few months following the opening of their terminal. At the same time, the Orange County 65 CNEL contour has shrunk noticeably.

In a similar time period, Burbank-Glendale-Pasadena Airport has reduced its 65 CNEL noise contour by more than fifty percent, while more than doubling the number of daily air carrier flights and the number of passengers carried.

These facts, while anechdotal in nature, do indicate the kinds of benefits which can be derived from Stage 2 to Stage 3 aircraft operations.

In the "Report to Congress, Status of the U. S. Stage 2 Commercial Aircraft Fleet", prepared by the Federal Aviation Administration in August 1989, there is a lengthy discussion of the costs and benefits of a national Stage 2 operating ban. The City of Long Beach is not aware of any intervening analysis which is more thorough and detailed than the report to Congress.

Testimony in the case of Lockett v. City of Long Beach, the first of the homeowners cases which was tried last year

in 1989, contains graphs which clearly support the antidotal description of the Long Beach experience and which were in no small part, persuasive to the Court in its decision that there were no noise damages. (Attachments 1 and 2).

II. Rights of Local Airport Proprietors to Restrict Operations to Limit Noise

The Committee has asked respondents to address the need for changes in standards or procedures which govern the rights of state or local governments (including airport authorities) to restrict aircraft operations to limit noise.

The right of local airport proprietors to restrict operations for the purpose of limiting noise is firmly established in the case law and in legislative history and comments by members of Congress and in material prepared by the Executive Branch, including the Federal Aviation Administration and Department of Transportation. This right is based on two factors: (1) The fact that airport proprietors are the ones who must pay the damages if there is excessive noise; and (2) the airport proprietor is closer to the community and can better respond to its needs than to any other level of government. This is reflected in a substantial body of case law.

In Santa Monica Airport Assoc. v. City of Santa Monica, 659 F.2d. 100 (1981) the 9th Circuit affirmed a trial court decision upholding against challenges based on federal preemption, interference with interstate commerce and denial of

equal protection, four out of five municipal ordinances regulating aircraft noise. The pattern of regulations in that case and the legal issues raised are substantially similar to those in this case.

The regulations affirmed by the Santa Monica court included a single event noise limit (SENEL), a night curfew and strict limitations on general aviation training and helicopter training. The Santa Monica regulation which was not upheld was a ban on jets, which would otherwise have been regulated by the single event limit.

In its preemption analysis, the 9th Circuit reviewed the Supreme Court decision in City of Burbank v. Lockheed Air Terminal, and noted that the Supreme Court, "... expressly left open the question of 'what limits, if any, apply to a municipality as a proprietor...' should it decide to enact similar ordinances ...". The caveat may have been thought necessary in view of the Court's earlier decision in Griggs v. Allegheny County, 369 U.S. 84 (1962) which held municipal airport owners liable for 5th Amendment takings of private property resulting from unreasonable airport use with respect to its neighbors. Municipal airport owners needed some means of limiting their liability under Griggs. Environmental quality control ordinances by municipal air-port operators are among those means.

The Supreme Court in Burbank instructed us to start with the assumption that the historic police powers of the state were not to be superseded by the federal act

unless that was the clear and manifest purpose of Congress. In light of Griggs, Congress did not preempt a municipal airport proprietor's right to enact noise ordinances. Because Congressional intent not to have preempted all regulations by municipal proprietors is clear, the Court concluded that these ordinance were not preempted.

A substantial amount of the legislative history indicates that Congress intended that municipal airport proprietors enact reasonable regulations to establish acceptable noise levels for airfields and their environs. The legisla-tive history does not suggest that Congress intended only to a allow municipalities the option of excluding certain classes of aircraft. The reasonable inference is that Con-gress intended to allow a municipality flexibility in fashioning its noise regulations.

In another key case, British Airways Board v. Port Authority of New York and New Jersey, (Concorde I) 558 F.2d 75 (2d Cir.1977) the first of two cases with the same name relating to the introduction of the Concorde at New York, the Court recognized a two-tiered regulatory scheme of aircraft noise control involving both the federal government and local airport proprietors. It held that the regulations adopted under this scheme were not preempted and did not violate the Commerce Clause so long as they were reasonably related to the objective of control of noise.

The Court noted that the regulation of excessive aircraft noise has traditionally been a cooperative enterprise

in which both federal authorities and local airport proprietors play an important part.

> "The task of protecting the local population from airport noise has, accordingly, fallen to the agency usually of local government charged with operating the airport. ... Indeed, since the operator controls the location of the facility, acquires the property, and air easements and is often able to assure compatible land use, he is liable for compensable takings by low flying aircraft. ... The right of the proprietor to limit his liability by restricting the use of his airport has been thought a corollary of this principle. It is perhaps more important, however, that the inherently local aspect of noise control can be most effectively left to the operator as the unitary local authority who controls airport access." 558 F.2d 83-85

Congress repeatedly has declined to alter this cooperative scheme.

Under the Commerce Clause, Congress has the power in order to promote nationwide transportation system and to control interstate and foreign air traffic flow, to dictate what aircraft should be permitted to land and take off from airports, but it is manifest from our scheme of aviation management that Congress has consciously committed to airport owners the responsibility of determining permissible levels of noise for the facility and its environment.

Congress has, by giving explicit sanction to this pattern of regulations, implicitly denied the executive power to preempt operator imposed noise restrictions regardless of the statutory source invoked to support federal administrative action.

The proper domain of the operator is the issuance of regulations or establishment of requirements as to the permissible level of noise which can be created by aircraft using the airport.

Congress reserved to proprietors the authority to enact reasonable noise regulations as an exercise of ownership rights in the airport, because they are in a better position to assure the public weal than any other entity. The Concorde Court held that a single event noise limit did not interfere with interstate commerce and was not preempted.

The Santa Monica Court noted that noise ordinances must be regarded as a economic regulation. They do not in- volve any suspect classification or regulation or control of fundamental rights. 481, F.Supp.927, 935.

The Supreme Court has held that to validate economic regulations, it is required only that the regulation, and the classification established thereby, be found to be rationally related to a legitimate state interest.

In such a case, an inquiry as to whether there is a preferable, easier or better method to accomplish the legislative goal is irrelevant. For equal protection purposes,

the city or state is not required to use the most modern or easiest or best method of accomplishing its purpose. 481 F.Supp., at 936.

On this basis, strongly supported by other Supreme Court decisions, the Santa Monica court affirmed this single event noise limit, curfew and general aviation regulations reviewed in that case.

In New Orleans v. Dukes, 427 U.S.297, the Supreme Court noted that when local or economic regulation is challenged solely as violating the Equal Protection Clause, the Court would defer to legislative determinations as to the desirability of particular statutory discriminations. Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions, such as race, religion, or alienage, its constitutionality is presumed and requires only that the classifications challenged be rationally related to a legitimate state interest. Rational distinctions may be made with substantially less than mathematical exactitude.

As the Dukes court said, the judiciary may not sit as a super legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights or proceed along suspect lines. ... in the economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the 14th Amendment.

In Minnesota v. Clover Leaf Creamery, 449 U.S. 456, the Supreme Court held that states are not required to convince the courts of the correctness of their legislative judgments. Instead, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is based could not reasonably be conceived to be true by the governmental decision maker.

Although parties challenging legislation under the Equal Protection Clause, may introduce evidence supporting their claim that it is irrational, they cannot prevail so long as it is evident from all the considerations presented to (the Legislature), and those of which we may take judicial notice, that the question is at least debatable.

The Commerce Clause Analysis, applicable to the noise regulations as described by the Santa Monica court is that Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the asserted local benefits.

If a legitimate local purpose is found, then the question becomes one of degree. The extent of the burden that will be tolerated will depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court's opinion in South Carolina Hwy. Dept. v. Barnwell Bros. noted a list of peculiar local

concerns and regulations of harbors, piers and docks, quarantine regulations and game laws. Local safety also seemed to have brought within the ambit of particular local concern in Brotherhood of Locomotive Fireman and Enginemen v. Chicago Rock Island, etc., 393 U.S. 129 (1968). Construction Industry Assoc. of Sonoma County v. City of Petaluma, seems to bring environmental concern into that concept of peculiar local concern.

In City Council v. Taxpayers for Vincent, 80 L.Ed. 2d. 772, the Supreme Court upheld a sign regulation affecting first amendment rights on the basis of substantial local interests, noting "the character of the environment affects the quality of life and the value of property in both residential and commercial areas."

It has been argued that the effect on commerce is not to be determined by the effect at one airport, but by the possibility of what might happen at other airports in Southern California and around the country, and a Court must weigh that entire possible course of action on it against interstate commerce. "To take the domino approach would make every airport operator the prisoner of every other airport operator, even if he is the first to initiate a given type of regulation", the Santa Monica case trial court said, rejecting the argument.

In Reeves, Inc. v. Stake, the Supreme Court reviewed a case in which the District Court concluded, "... that the State had 'simply acted in a proprietary capacity'" as per-

mitted by Hughes v. Alexandria Scrap ...,". The Supreme Court noted that a number of cases, including Hughes v. Alexandria Scrap, and others reasoned that "state proprietary functions" are exempt from Commerce Clause scrutiny. The Commerce Clause was directed as a historical matter, only at regulatory and taxing actions taken by states in their sovereign capacity.

The Court noted that state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, states should share existing freedoms from federal constraints, including the inherent limitations of the Commerce Clause. Airport operators enact noise regulations as proprietors

In regard to the need for justification of actions intended to protect the environment, the Alexandria Scrap court said: We do not believe the Commerce Clause was intended to require independent justification for such action.

In its decision in Kassel v. Consolidated Freightways, 450 U.S. 662 (1981) the Supreme Court analyzed both the balancing test and the degree of deference to be given to local regulations to be reviewed under the Commerce Clause and stated at 459 U.S. 669-670:

> "The Commerce Clause does not, of course, invalidate all state restrictions on commerce. It has long been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power

in the State to make laws governing matters of local concern which nevertheless affect interstate commerce or even, to some extent, regulate it. ... The extent of permissible state regulation is not always easy to measure. It may be said with confidence, however, that a state's power to regulate commerce is never greater than in matters traditionally of local concern."

"Indeed, 'if ... justifications are not illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce.' Those who would challenge such bonafide ... regulations must overcome a 'strong presumption of validity'".

"This weighing by the Court requires, and indeed the constitutionally of the State regulation depends on a sensitive consideration of the weight and nature of the State regulatory concern in light of the extent of the burden imposed on the course of interstate commerce."

"In the absence of congressional action to set uniform standards, some burdens associated with State ... regulations must be tolerated."

The 9th Circuit in Burlington Northern Railroad Co. v. Dept. of Public Service Regulation, 726 F.2d 1106 (1985), held:

> "The standard of judging the constitutionality of a statute ... which regulates economic activity, is the same under the due process, equal protection or commerce clauses. Legislation will be upheld if it bears a rational relationship to a legitimate state interest." 726 F.2d at 1109.

The standard of review outlined by Burlington is that only rationality, not perfection is required. A court will not weigh evidence to determine whether the regulation is sound or appropriate; nor will it pass judgment on its wisdom. Questions of economic policy are appropriate issues for the political arena which spill over into the judiciary only when they implicate constitutional rights. Those challenging regulations must show that the 'legislative facts' on which the statute is based could not reasonably be conceived by the legislature to be true.

Actions by local airport proprietors to restrict aircraft operations are presently reviewable under the Equal Protection Clause, the Due Process Clause and the Commerce Clause of the United States Constitution. These provisions of the U. S. Constitution provide substantial protection for the national interest and yet provide a fair test which also protects the interest of the local airport proprietor. So long as the current thinking of the U. S. Supreme Court in interpreting these three provisions is followed, there is no need for a new standard. If, however, the federal government wishes to review local noise control rules under a

different standard or a different reading of these constitutional provisions than what is supplied by the United States Supreme Court, or if Congress enacts regulations affecting the review of these regulations, then it is clear that a new standard needs to be established and that standard needs to explicitly state that airport operators are permitted to establish restrictions including single event noise limits at their airport which limit their liability and which reduce cumulative noise to a level of 65 CNEL or 65 LDN.

III. Standards for Lawsuits by Persons Adversely Affected by Airport Noise

For most of the decade of the decades of the 1970's and 1980's following the Supreme Court decision in Griggs v. Allegheny County in 1962, the trend of case law in all of the courts in the country, was to establish and expand bases upon which airport operators could be held liable for taking or damaging of property due to aircraft overflights. Nowhere was this expansion greater or clearer than in California. The three decisions in California which are probably the most significant in expanding airport liability were Aaron v. City of Los Angeles, 40 Cal.App.3d 471, 115 Cal.Rptr. (1974); Greater Westchester Homeowners Assoc v. Los Angeles, 26 Cal. 3d. 86, 160 Cal.Rptr.733 (1979) and Baker v. Burbank-Glendale-Pasadena Airport Authority 39 Cal.3d 862, 328 Cal.Rptr. 293 (1985), (hereinafter Baker I).

In those cases, the Courts concluded that not only were airport proprietors responsible for inverse condemnation under the theory that the noise from aircraft operations took or damaged the property of neighboring residents by reducing its value, the Courts also determined that airports were liable for nuisance damages which could include interference with the quality of life, creating harmful or offensive conditions, and even personal-injury type damages.

Finally, the first Baker case in the California Supreme Court determined that airports were continuing, rather than permanent nuisances. What this has meant is that rather than being sued in one lawsuit where all damages for all times would be determined, an airport could be subject to multiple lawsuits because as long as the airport operated, a new injury was created each day. Thus, San Francisco Airport was subjected to tremendous volumes of small claims actions for nuisance. This harassed airports, creating a state of uncertainty as to their financial condition and considerable legal expense.

More recently, the courts in California, continuing their trend of leading the nation in this area, have clarified the law as to what constitutes liability by airport proprietors and under that circumstance.

The two most important decisions here are Institoris v. City of Los Angeles, 210 Cal.App.3d 10 (1989) and the Court of Appeals decision from this year in Baker v. Burbank-Glandale-Pasadena Airport Authority 220 Cal.App.3d 1602

(1990) (hereinafter Baker II). These cases made clear that there is a statute of limitations for inverse condemnations actions. It is five years. They made clear that where operations and noise levels have stabilized for a period of five years, an airport operator may acquire a prescriptive easement (avigation easement) over the property, permitting it to make noise at all levels less than the stabilized noise level. The courts also have found that the nuisance damages are only available for the 100 days prior to trial.

Finally, and perhaps most important, the Baker court found that liability for excessive noise damages exists at noise levels above 65 CNEL and does not exist at noise levels below 65 CNEL. Now for the first time as a result of this decision, there is a predictable and identifiable standard for liability, and there is a noise standard against which airport operators can plan. This should have the substantial effect of stabilizing aircraft noise litigation in California.

If there were to be a national standard, it should follow the pattern in the Baker and Institoris cases. A statute of limitations for inverse condemnation damages should be specified. The right of airport operators to acquire prescriptive easements should be specified. The time limits, if any, in which nuisance damages would be applicable should be specified. The regulation should specify which nuisances are continuing or permanent. It is suggested that the California rule of continuing nuisance flies in the face

of all previously existing law and that the appropriate standard is that airports are permanent nuisances.

Finally, a standard for liability should be established, such as 65 CNEL or 65 LDN. In addition to this, it may be appropriate to specify that even if a prescriptive avigation easement has been acquired at some point in time, increases in cumulative noise of 1.5 decibels would result in renewed liability. This is consistent with a new California statute.

IV. Economic Costs and Benefits of Alternative Approaches

The Committee has asked for comments on the economic costs and benefits of alternatives for dealing with Issues 1 through 3 including effects on airport capacity of both individual airports and the national systems, effects on airline competition, effects on the costs of air transportation, and the effects on the environment.

Even a cursory analysis of the three issues which the Committee has asked respondents to address will indicate that any action the Congress might take on any of the three will have costs and benefits, both to the environment and to the economy. Each such action may also affect airport capacity, airline competition and the cost of air transportation.

Elimination of Stage 2 aircraft will clearly have economic costs to the aviation industry by requiring a more rapid acquisition of new aircraft with the attendant capital expense. This will also cause elimination of some of the oldest and

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therefore, least costly, aircraft from the fleet. This may increase the cost of air transportation and therefore have an economic effect by making it more difficult for some carriers to operate or operate at low cost. At the same time, elimination of Stage 2 aircraft will have potential benefits for airport capacity, at least to the extent that capacity is constrained by noise. This is true because, as has been seen in the cases of Long Beach, Burbank and Orange County, significant increases in air carrier operations can occur hand-in-hand with significant decreases in noise upon the conversion from a predominately Stage 2 to an entirely Stage 3 fleet. This increase in airport capacity is accompanied by the environmental benefit of reducing noise. This in turn has an economic benefit in the sense that it avoids reduction in property values which might otherwise occur and result in attendant litigation to recover the economic costs imposed on neighboring residents where their properties are diminished in value as a result of aircraft overflights.

It might also be noted that Stage 3 aircraft are more fuel efficient than Stage 2 aircraft of comparable sizes and engine configurations. As a consequence, there will be signi-ficant environmental and economic savings from a conversion to Stage 3 aircraft by reducing the amount of fuel used. This may counterbalance some of the acquisition costs of the newer air-craft. There will also be environmental benefits from the reduced fuel use since less fuel burned results in less emissions which with their potential air quality implications

The best analysis of these issues is contained in the report to Congress, "Status of the U. S. Stage 2 Commercial Aircraft Fleet" prepared by the FAA in August 1989. In addition, the noise working group of the Task Force on System Capacity did some work on this subject.

In regard to the regulations imposed on aircraft operations for noise purposes by local airport proprietors, it is clear that what the least cost option is depends on one's point of view. It is clear that any regulation will impose some increased cost and reduced efficiency on some airlines and consequently, on the total capacity of the system to operate efficiently. This may in turn affect the cost of air transportation. At the same time, any effective regulation will have a beneficial effect on the environment. In addition, local operational restrictions which reduce noise will have economic benefits in the sense of avoiding reduction of the value of surrounding properties and avoiding the concomitant litigation.

While there is no comprehensive national study which discloses what exactly the economic costs of noise to residents in communities surrounding airports might be, the experience of the City of Long Beach provides a hint. Testimony in the recent case of Lockett v. City of Long Beach which was won by the City, indicates that the residents and their appraisers in that case, viewed the diminution of value to their properties as being on the average in the range of $20,000 to $30,000 per property. The Lockett case represented approximately 200 properties. The City has over 700 cases

outstanding left to be resolved. While the Plaintiffs did not prevail in Lockett, potential economic costs of such litigation are substantial. Each of the plaintiffs, both in Lockett and in the unlitigated cases has asked for damages of $100,000 per property. On the basis of 900 properties, this represents a value of approximately $90 million. Assuming a $20,000 cost per property (consistent with the Lockett the plaintiffs' testimony), the potential cost of loss of all of these cases by the City would have been in the vicinity of $18 million.

This is not by any means a scientific study, and of course, the City did not lose in Lockett and the other cases remain unlitigated, but it is an indication of the magnitude of the economic cost of noise, at least in the opinion of some individuals. Absent some scientific national study of this issue, this can serve at least as an empirical indication that are substantial economic costs related to noise which would be avoided by regulations reducing it.

If rules were adopted which prohibited recovery of reduction in property values where this is caused by aircraft overflights, that action would eliminate the direct economic burden on airport operations and the indirect burden on individual airport and system capacity which such potential noise damages, impose. It might, at the same time, have a broader economic cost, however. If residents were unable to recover damages for the reduction in value of their property, properties could potentially be abandoned and result in urban

blight and all of the ancillary problems which that portends. This, of course, has a much larger economic impact. There is no specific study which indicates that such occurrence is necessarily likely, but it is a sufficient possibility to be considered.

The current status of airport liability, airport right to impose noise regulations and ability of aggrieved parties to litigate both for noise damages and to challenge noise restrictions, is reasonably balanced. There is a cost to airports for aircraft noise litigation. There is a cost to airport neighbors in terms of their annoyance and reduction in property values. This is reimbursed by the airports. There is a cost to airlines to meet the noise rules and to reimburse the airports for their economic costs in meeting the liability burden through the rates and fees charged by the airports. This system imposes a rough balance, but no party in the system is able to make an economic choice which will affect their costs.

Perhaps the fairest balance would be to have all of the costs, both the homeowner costs for reduction of property value due to noise from overflights, and their own costs in terms of reducing noise imposed directly on the airlines. Then they could make an informed choice as to the cost or benefit of any particular course of action. The same would be true if both costs were imposed on the federal government. Either way, there would be an unitary party with the ability to make those choices. At present, the airports which have

the liability, have relatively little control over the noise, although they may enact some regulations which control it to some degree. It is, however, the airlines which create the noise for which the airport must pay. The best airports can do is do those things which force the airlines to make choices which indirectly access these costs.

IV. Procedures or Standards for Federal Regulation of Airspace

It appears that this issue has chiefly to do with such matters as the East Coast Plan. The City of Long Beach has no specific comment on this issue. The City of Long Beach does make the following observation: Change in traffic patterns which results in increased noise or in noise being heard in places where it has not been heard before will result in new or greater intensity of complaints and community reaction.

Thus, while one neighborhood might argue that it would be happy if the planes flew somewhere else because it would be quiet, a new neighborhood that planes might fly over would be unhappy because it had planes flying over it where it didn't before. The same unhappiness would occur where one level of noise had historically existed, but was significantly increased.

V. Federal Assistance for Noise Abatement Planning and Programs.

The City of Long Beach makes the following comments in regard to land use planning around airports:

(1) Where a new airport is being developed or where an already developed airport exists in an area which is some distance from residential development, land use planning can be a significant benefit in terms of avoiding liability and therefore permitting the airport to maximize its operational capacity. This also has the parallel benefit of avoiding the need for regulations with their indirect costs.

(2) Land use planning is also useful where properties surrounding the airport even though they may be residential, are of either very low values or are scheduled for redevelopment.

(3) Land use planning is not much help where, as is the case in Long Beach and Orange County, and Burbank, the airport itself is surrounded by residences. In such stable communities, there is no practical land use application which can be used to avoid the costs of aircraft noise by means of planning. There are some tools which have been proposed - one is the acquisition of aviation easements. This simply involves a voluntary payment to be allowed to make noise, instead of an involuntary payment for noise damages. This has the same economic cost to the airport and results in roughly the same financial risk. It has the effect of shifting the burden of the noise from the airport to the resident.

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Another approach is sound attenuation. This has been found to be very effective in some communities, particularly where accompanied by air conditioning. A study conducted by Bolt, Baranek and Newman in Atlanta, however, found that the perception of noise among residents whose properties had been treated for sound attenuation some years prior to the study, did not differ significantly from that of residents subjected to substantially the same amount of noise whose properties had not been treated. Thus, there is at least room to question whether sound attenuation is really a useful method of avoiding the aircraft noise problem. It certainly only benefits the property owner while he is inside. It does nothing outside. It continues to impose an economic cost on either the airport operator or the federal government to pay for such sound attenuation. Costs imposed on the federal government are of course, borne by the entire aviation system.

VI. Conclusion

There is no cost-free way of balancing the needs of the air transportation system and the people who live near airports and are annoyed or burdened by the noise from aircraft operations. The best one can hope to do is arrive at a reasonably fair balance between the various costs. It does not appear likely that there is any set of circumstances

i

in terms of a national policy which would result in a dramatically better balance of the economic costs to individuals in the system than the present set of circumstances.

It is clear, in any event, that absent some major change in the law, the points of view of airlines who want no restrictions imposed on them at all, airports who want to avoid expenditures for noise damages or noise reductions and neighboring residents who want no noise, are irreconcilable.

OCTOBER 4, 1990

STATEMENT BY ASSEMBLYWOMAN ELIZABETH A. CONNELLY REGARDING EXCESSIVE AIRCRAFT NOISE AT ARLINGTON, STATEN ISLAND, N.Y. ATTRIBUTABLE TO AIR TRAFFIC AT NEWARK INTERNATIONAL AIRPORT

Arlington and Mariners Harbor, the well-populated communities on the northwest corner of Staten Island exist today as if they were at the end of the runways at Newark International Airport. Newark International is in New Jersey; Arlington and Mariners Harbor are in New York.

But, like most forms of pollution -- and excessive noise assaults the environment as disastrously as air and water pollution -- state boundaries remain invisible. Similarly, actions to correct these environmental assaults can not cross the artificial boundaries of states. The federal government must take a hand in both regulation and providing measures of long awaited -- and well deserved -- relief.

In dealing with aircraft noise, the Federal Aviation Administration clearly has the authority to act to provide some measure of relief to thousands of beleaguered residents of Staten Island. Actually, the FAA must act, <u>again</u>, to correct the results of its previous attempts to reduce aircraft noise.

Earlier this year, the FAA modified its departure plan, hoping to send climbing aircraft along a path that paralleled the industrial areas that line the coasts of New Jersey and Staten Island. I hope that plan looked good on paper, because, in practice, it made the problem worse.

The communities involved are beset every hour of every

day with the roar of jet engines, the deafening drone that intensifies steadily until people in routine conversation cannot hear the others' words.

The FAA's records will show that I, and others, have communicated with its officials to seek relief, to try to understand the dynamics of the situation, and perhaps suggest alternatives of our own. Yet the FAA remains steadfast that it can do no more without shifting the noise problem to another residential community.

Unlike many other residential areas that grew in the shadow of an airport, Arlington and Mariners Harbor are in a reversed position. Newark International Airport grew up in an area where Arlington and Mariners Harbor -- both historic communities with roots that go back to the Tall Ships -- had existed as home community to thousands.

And, there's enough New York State pride in me to suggest that since we receive none of the benefits the airport brings to New Jersey, we should not have to participate in the solution to aircraft noise that pollutes Jersey's residential areas.

New Yorkers derive few, if any, job opportunities associated with the airport. We benefit from none of the taxes

generated, none of the revenue, none of the economic development potential. We get the noise, however. There's something desperately wrong.

Since I learned that the New Jersey congressional delegation was taking a united approach to cure the aircraft noise problem at New Jersey communities, I began to develop a fear that New Jersey's solution would result in an intensified problem for Staten Island. After all, there has been no talk of cutting back air traffic at Newark to alleviate noise. I suspect New Jersey's congressional members would want the air traffic diverted away from populated New Jersey. That's the same as saying diverted to Staten Island.

The long-term solution is translated into quieter air craft, but that's truly long-term.

The immediate solution is not so hard to attain, in my judgement. There are literally thousands of acres of undeveloped and commercially or industrially developed lands in the area surrounding Newark International Airport. And, it is these spaces over which the most heavily-travelled flight paths must be developed.

I understand the arguments that these non-residential spaces are not always in the optimum flight paths, but the

question of "optimum" is a relative term -- what is most desirable for an airliner to attain its proper heading is not necessarily most desirable for the people living below the flight path.

With the FAA at a virtual standstill in solving these conditions. we have turned now to Congress to provide understanding, compassion...and a reasonable solution. Where the FAA deals with headings, degress and minutes, our hope is that Congress will deal with the more human qualities -- the same qualities that are assaulted every hour of every day when you live in the flight paths of Newark International Airport.

BEFORE THE
SUBCOMMITTEE ON AVIATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

HEARINGS ON THE FEDERAL AVIATION NOISE POLICY
OCTOBER 4, 1990

STATEMENT OF
FEDERAL EXPRESS CORPORATION

Mr. Chairman and members of the Subcommittee, Federal Express appreciates the opportunity to submit written comments in these hearings on the important topic of aircraft noise, and the need for a strong national noise policy.

In 1986, Federal Express' Chairman, Frederick W. Smith, in testimony before this Subcommittee on Noise made the following statement:

> "No other issues have a more crucial significance for the management and quality of Federal Express overnight air express service than the subjects before this Subcommittee in these hearings. No other issues have a greater impact on our multi-million dollar aircraft acquisition and fleet planning decisions. No other issues have a greater potential impact on our aircraft scheduling and system efficiency. And, in the final analysis, no other issues have a greater bearing on the quality of service we are able to render to the hundreds of thousands of shippers and consignees who use, and rely on, our overnight delivery services every night."

This statement holds more true today as Federal Express strives to meet the growth in the demand for Federal Express services and meet the conflicting dictates of over twenty major airports in addressing noise. Airport capacity in this nation is the issue. No amount of new funding will completely quiet the skies around airports, for even the quietest airplanes make

noise. Until Congress imposes, through legislation, an acceptable national noise standard, no real capacity initiatives will be achieved. This Congress must ensure that any capacity enhancements to be achieved through new funding schemes are matched by an equally successful scheme to insure continued investment in Stage 3 aircraft by U.S. air carriers. Capacity on the ground must be balanced by capacity in the air. Unless a national noise standard is adopted, investment opportunities in Stage 3 aircraft are fraught with risk.

This issue is not new to Federal Express. As Congress addressed the phase out of Stage 1 aircraft, Federal Express in submitted comments requested that if Stage 2 aircraft were to be required to be flown by January 1, 1985, these aircraft be afforded use for their economic lives. One year after the 1985 Stage 2 federal deadline, Boston adopted noise rules precluding Stage 2 operations and encouraging the dedication of Stage 3 aircraft to Boston. To date, city by city has followed Boston's lead. In 1986, Federal Express testified before this Subcommittee and stated:

> "Federal Express is willing to continue to incur the substantial cost of improving the noise emission level of its aircraft fleet, but we can only do so if we receive concomitant assurances that our capital investment in quieter aircraft will not be undermined by an increasing proliferation of local airport curfews and other noise-related restrictions which can destroy the quality and efficiency of our specialized overnight express service."

Federal Express has invested millions of dollars in new aircraft and reengined and hush kit technology. We were the

first U.S. airline to obtain an STC on an aircraft for acoustical treatment. We are continuing our efforts. We have stated publicly that our goal is to be all Stage 3 before the year 2000. But all these efforts will not have come soon enough to address the "exporting of noise" which is a standard being adopted airport by airport in the form of noise rules. Airport operators tell carriers they have to put in noise rules to appease the constituents. Rarely is an economic or environmental analysis performed by the airport analyzing the impact of any proposed rules. Yet, if an air carrier seeks an exemption from a noise rule, a full showing of the economic and environmental impacts must be fully briefed for the airport.

Federal Express contends that impacts negatively affecting the national transportation system, such as noise rules, are a perfect example of a proper forum for Federal control. The local governments cannot evaluate the impacts of a noise rule beyond their jurisdiction, and they should not have to try.

Federal Express urges that the following issues are critical to protecting our valuable resource, the national aviation transportation system:

- Stage 3 aircraft as currently certified pursuant to FAR Part 36 noise standards must be exempt from any local noise regulations.

- Stage 2 aircraft must be permitted operating rights to airports unless the airport can justify on economic and

environmental grounds that restrictions are necessary. The FAA should have to approve all Stage 2 noise restrictions after full opportunity for public comment.

- Local control must include responsibility and enforceable compatible zoning and land planning efforts. Sound proofing must be allocated for all schools, hospitals and health care facilities located in noncompatible land areas surrounding airports.

- Air carriers must be afforded the right to address unreasonable, arbitrary or discriminatory noise rules in court.

In summary, Federal Express is on the brink of critical service issues affecting all New York Port Authority Airports, Los Angeles, Ontario, Seattle, Raleigh Durham, Boston, San Diego, Burbank, Long Beach, and San Francisco due to noise regulations. If the current noise rules proposed and adopted become fully effective and enforceable, Federal Express will not have the Stage 3 aircraft in its fleet that will be required system-wide by January 1, 1992. The problem worsens each month as additional local airports seek to impose variations of the noise rules. Noise rules impose a serious threat to the integrity and efficiency of the interstate air transportation network, particularly in the case of nighttime

all-cargo express operations which play a vital part in the nation's economy, health care distribution, and national defense. We urge this Committee to lend its special expertise to commence solving these problems. Federal Express suggests that legislation effectively securing funding initiatives and a national noise policy will enable the aviation industry to achieve the capacity necessary to service this nation in the next decade.

Respectfully submitted by:

FEDERAL EXPRESS CORPORATION

Julie H. Ellis
Managing Director
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Dated: October 3, 1990

FXJSZ.933

Monmouth
Organization
Against
Aircraft
Noise

660 Tennent Rd.
Manalapan, NJ 07726

September 18, 1990

Congressman James L. Oberstar, Chairman
Attn: Ms. Caroline Gable
House Aviation Subcommittee - Committee on Public Works and Transportation
2251 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Oberstar:

I am the Co-Chairman of the Monmouth Organization Against Aircraft Noise (MOAAN). I would appreciate your including this letter in the transcript of your October, 1990 hearing on aircraft noise. Please note the inclusion of two position statements and five major Items in this letter. In the position statements, I make suggestions for interim, remedial relief from the burdensome jet noise that New Jerseyans are suffering with. We have been a hostage to a cruel, destructive "scatter plan" experiment by the FAA for four years now. It is disgraceful that our human rights have been so egregiously violated.

In fact, Monmouth County residents were the first to suffer from the FAA's implementation of modified jet routes. The western portion of the County was negatively impacted with severe jet noise starting December 1986; and the eastern portion starting in September 1986. We are long overdue for a restoral of our prior quiet environment. Monmouth County is a suburban/rural area located about 35 miles due south of Newark International Airport, the nearest of the three NYC-area airports, which were involved in the modified jet routes. We frequently cannot get one minute of quiet due to the incessant, low-level jet thunder rumbling over us and permeating our homes. Thus, many of our County residents have had their lives interfered with and ruined for FOUR YEARS now. We appeal to you for relief.

I am also the Technology Advisor to the NJ Coalition Against Aircraft Noise (NJCAAN). NJCAAN is a grass-roots organization representing residents of over 200 NJ towns. These NJ towns have been adversely impacted by relatively recent jet noise imposed on us from the FAA's re-routing of jets under the guise of the Expanded East Coast Plan (EECP) The EECP was implemented in 1987 without an Environmental Impact Study (EIS), which the GAO stated should have been done. The 200+ towns had prior experienced no significant jet noise. Now, we frequently are exposed to jet noise louder than a vacuum cleaner at ten feet distant. It should be obvious that the FAA has in one quick re-routing swipe, destroyed the tranquil environment of these hundreds of towns. From a moral perspective, I view this as a form of stealing.

The EECP jet noise has created undue, major, and long-term stress for millions of New Jerseyans who prior were untouched by [jet] noise. The danger of prolonged exposure (years!) to unwanted and excessive jet noise should be the overriding factor in deciding whether to install new or modified jet routes over populated areas. Until such time as it can be proven without any doubt that the jet noise created by the EECP is not harmful to human health, no change of jet routes over NJ should be permitted relative to the pre-EECP routes. I'm all for progress, but not when there is a clear and present danger to human life or even degradation to quality of life.

The Monmouth Organization Against Aircraft Noise (MOAAN) position on jet noise in NJ is:

1. That the EECP was illegally implemented without an EIS, and should therefore be ROLLED BACK and redone to include public input and use of off-shore airspace, as is done in LA. That until the rollback takes effect, the entire state of NJ immediately be designated a "Noise Abatement Zone", thus controlling excessive and arbitrary [noisy] thrust engine settings; and

2. That Newark International Airport be CLOSED from 10:00 p.m. to 7:00 a.m., as is the case with Washington National Airport. That until this nighttime curfew is implemented, an immediate return to pre-EECP routes be instituted between these hours.

Herewith, my contributions to the Committee:

ITEM I: I believe aircraft noise affects two distinct segments of the geographic population: (1) areas within a few miles from airports and (2) areas relatively distant from airports.

The second category of long-distance-reaching jet noise historically did not exist before the EECP. Thanks to the new and unacceptable philosophy by the FAA, the second category exists. This category derives its existence from the "spread the noise" philosophy of the FAA. This means that "en-route" noise is pushed down to lower altitudes over wider areas. The aircraft have gained some altitude, but are still climbing at significant throttle, and making much noise. The EECP causes en-route jet noise afflicting areas up to 50 miles from airports. Historically, before the EECP, "en-route" jet noise was non-existent.

ITEM II. I wish to go on record as stating that "Stage 3" aircraft will not solve the EECP "en-route" jet noise problem. In NJ, we already have a significant fraction of our overflights as Stage 3, and they still make inordinate noise. An analogy to comparing Stage 2 to Stage 3 jet noise is the following rhetorical situation. Would you rather try to relax with someone shouting in your ears at 10 inches away or 25 inches away from you? Obviously, the answer is neither. One can't relax with either noise level. Stage 3 (or 4)'s benefit will primarily accrue to those living within a few miles of an airport, where aircraft must converge.

The solution to the EECP's en-route jet noise problem, and similar "scatter plan" attempts, is to revert to the original tried and true jet routes, where people chose the communities they wanted to live in based on the historical quiet of decades. If an alternative set of routes can be acceptable to those affected, i.e., pass muster with an EIS, then the alternate is fine; otherwise, it is not.

ITEM III. The noise metric used by the FAA, the "LdN", is invalid. I cite the Rylander reference below as scientific evidence that LdN is not a valid correlator of "noise annoyance". Therefore, Ldn in general and 65 Ldn in particular is not valid. By induction, Ldn should not be used as a "stick" to force unwanted jet noise into the homes of suburban and rural

areas, e.g., in NJ.

Since t[redacted] DOT has severe environmental controls on creating new [redacted] state highways, so should the FAA for its "highways" (noiseways?) in [redacted]y. The DOT cannot arbitrarily bulldoze a six mile wide highway and permit major noise to interfere with the lives of residents - without first conducting an EIS and ensuring no significant detrimental effects on those who would be affected. (The FAA states that its "highways in the sky" can generate noise several miles wide on each side.)

ITEM IV. The FAA should not be able to arbitrarily tamper with established jet routes, without an EIS By tamper, this should include the volume of jet traffic, the altitude of the route, and the throttle setting. Again, see the analogy above to the U.S. DOT and EIS requirements.

ITEM V. I suggest that the National Bureau of Standards conduct a double-blind study on "quiet". In the study, subjects would be asked not how much noise they could tolerate, but how much noise they like. Specifically, questions should be formulated, and test jet noise tapes should be generated, where subjects should be asked "If you had a choice, do you prefer quiet, or a specific level of jet noise?" I can tell you in advance of such tests, that few people - particularly those who live in suburbs and rural areas - would welcome jet noise. If those people are protected from noise from rock bands and industrial noise pollution by local and state regulations, then why should the Federal Government be permitted to ruin the quality of life for those same residents? Also, noise regulations should not be devised for an "average" person, but rather protect all humans.

If an asthma sufferer purposely moved to an area where clean air prevails, then similarly people seeking quiet have chosen their homes and communities for the historical quiet present. Since air quality regulations protect the asthma sufferer, shouldn't the Federal Government similarly protect those who need to have quiet in their lives?

For your information, I am attaching a fact sheet on the NJ jet noise problem.

I recently returned from a two week vacation to several upstate New York cities, including Rochester and Buffalo; and Canadian cities such as Toronto, Ottawa, and Montreal. Without exception, these cities were quieter (jet noi[redacted] their downtown areas than rural Freehold, NJ. I view this as a disgra[redacted] NJ is currently inundated with such a sonic atrocity, and this is tota[redacted]cceptable . The freedom from significant jet noise was obvious in a[redacted] cities. There is no reason why massive portions of NJ have been effectively destroyed by aircraft noise, thus making them uninhabitable for human use. The FAA must immediately correct its misactions and roll back the EECP, so as to restore the liveability of central and northern NJ.

Thank you.

Yours truly,

Ronald B. Freeman,
Co-Chairman

Fax: 201-972-2744

Reference:
R. Rylander et al, "Aircraft Noise Annoyance Contours: Importance of Overflight Frequency and Noise Level", Journal of Sound and Vibration, 1980, volume 69, pages 583-595.

Attachment:
Fact sheet on the NJ jet noise problem

Monmouth
Organization
Against
Aircraft
Noise

FACT SHEET
ON JET NOISE IN MONMOUTH COUNTY, N.J.
CAUSED BY THE FEDERAL AGENCY ADMINISTRATION'S (FAA)
EXPANDED EAST COAST PLAN (EECP)

- Historically, most of Monmouth County had no jet noise; prior to the EECP, it was absolutely quiet. Starting in the Fall of 1986, FAA re-alignment of jet routes have caused a substantial increase in jet noise in Monmouth County. Monmouth County is located 30 to 40 miles south of Newark Airport, the closest of the three NYC-area airports.
- EECP has "spread out" the jet noise from the three NYC-area airports (JFK, LaGuardia, and Newark) into prior quiet NJ residential communities. These new, untested jet routes are causing an inundation of jets that fly at low altitudes over suburban and rural NJ.
- The Government Accounting Office (GAO) severely criticized the FAA for not performing an environmental impact study before implementing the most extensive aircraft re-routing in 20 years. (GAO Report # RCED-88-143: "Aircraft Noise - Implementation of FAA's Expanded East Coast Plan", August, 1988; available for free by calling 202-275-6241).
- The EECP was implemented without any prior public notice.
- EECP is creating a dramatic increase in jet noise in communities as far as 50 miles from the three NY/NJ metropolitan airports.
- Jet noise pollution frequently exceeds 77 decibels, and sometimes exceeds 83 decibels. This is louder than a vacuum cleaner at 10 feet from a listener.
- Each jet flyover causes up to 3 minutes of loud, rumbling jet thunder.
- Increased jet noise has degraded the quality of life for many New Jerseyans.
- Jet noise in NJ exceeds the permissible State noise standards for industries operating in a residential area. (NJ Administrative Code: Title 7, Subchapter 1; effective January 18, 1974).
- Night flights are often the loudest flights. These flights start about 10 P.M., continuing throughout the night, past 2 A.M. These flights are cargo flights, using older (noisier) jets, are frequently heavily loaded (thus requiring increased thrust settings), and generate the worst noise. It is often difficult to sleep because of this night-time loud and frequent jet noise.
- The safety of NJ residents has been severely compromised. As many as 10,000 commercial jets per month fly over a given community in Monmouth County. This increased number of jets flying at lower altitude increases the chances for a mid-air collision, causing an aircraft crash in a residential neighborhood.
- The jets are pumping dangerous air pollutants into our atmosphere including: hydrocarbons, sulfur oxides, nitrous oxides, carbon oxides, and particulates.
- More than 1,252 TONS of air pollutants per year is being dumped on Monmouth County alone.
- The EECP has contributed to the increase in air pollution which is responsible for: (1) an increase in bronchitis, pneumonia, chronic lung diseases, and lung cancer, (2) degradation of cardiovascular function, including deficiency of oxygen in both the lungs and blood, (3) an increase in eye irritation, (4) increased smog and acid rain, and (5) a decrease in the ozone layer.
- 15,000 NJ residents have signed a petition to stop EECP.
- While the EECP affects air routes serving JFK, LaGuardia, and Newark Airport: NJ is the only state in which these new air routes and noise pollution are placed. NY and Conn., which both benefit economically from the airports, are not sharing the noise burden. NJ is being unfairly singled out. Further, not all NJ communities are bearing the brunt of the jet noise problem; some

NJ communities not absorbing their fair share.

- The FAA has refused to provide documentation showing why it can not use:
  - — Ocean routing, which is environmentally preferable to the EECP's inland NJ routes.
  - — Pre-EECP routes for night flights.
- The FAA has not provided justification for its "65 LdN" noise standard. This "standard" is based on statistical averaging. For example, it asserts that humans perceive five loud sonic booms in one hour the same as a radio playing constantly at a low volume setting for the same one hour. Humans do not react to statistical averages; they react to each noise event. Therefore, the 65 Ldn "standard" is scientifically invalid.
- The FAA has refused to implement immediate noise abatement procedures that could be put into effect as an interim solution.
- The FAA has refused to provide documentation that specifies the surplus capacity available using pre-EECP flight paths.
- FAA has not proved that airport delays have been improved as a result of EECP.
- The EPA and National Bureau of Standards state: " To select a quiet residential area ... [a house should be] located at least 15, and preferably 20, miles away from the jetport before the noise from jetcraft flyovers would be relatively unnoticeable." Now, communities as far as 50 miles away are experiencing disturbing jet noise pollution.
- The EPA also states that: "buildings would have to be a lateral distance of about 3 to 4 miles from the flight path before noise would drop to a tolerable level". Therefore, jets flying at 3,000 feet above our homes violate this standard.
- The FAA's quick-fix is the newer, "quieter" Stage 3 aircraft which will be exclusively operated by the year 2015. Until then, today's noisy, older aircraft (Stage 2) will be operated. This is not a solution to the NJ jet noise problem. Nor will 100% use of Stage 3 aircraft adequately remove the now excessive jet noise.
- The FAA tried at least two "scatter" plan tests nationally and both failed, resulting in immediate roll-backs. In November 1983 at Washington (DC) National Airport, and in August 1987 at Seattle-Tacoma (Washington State) Airport, the FAA learned that trying to "spread" jet noise from historical aircraft routes does not work and causes a huge public outcry. Also important is that the noise levels created by these new jet routes, were before-hand deemed acceptable by the FAA (using its 65 Ldn "standard"), yet the public outcry was huge to stop this new jet noise. Therefore, the 65 Ldn "standard" is not reasonable for prior quiet non-urban areas.

Published by: Monmouth Organization Against Aircraft Noise
660 Tennent Road
Manalapan, NJ 07726
Fax: 201-972-2744

January, 1990

Aircraft Noise + Its Effects on Health) 7-9-90 R. Freeman

SUMMARY

Aircraft [redacted] pollution is harmful to one's health. Aircraft noise can cause an increase in hypertension, blood pressure, cardiovascular disease, and gastric disease. Also, aircraft noise can increase anxiety and stress; interfere with sleep and relaxation; and produce serious psychological problems and mental disorders. Aircraft noise has been implicated in decreased birth weight of infants when the pregnant mother was exposed to aircraft noise.

Like cigarette smoke pollution, it is dangerous to expose humans to aircraft noise pollution where it can be avoided. and should

HYPERTENSION - blood pressure and hypertension

"The Deutsch Forschungsgemeinschaft ... in its research report on Effects of Aircraft Noise [concluded] '[jet] noise constitutes a health risk ... a risk factor for essential hypertension can be presumed.' " . IV.

"Exposure to ... aircraft ... noise caused an increase of diastolic blood pressure". VI.

"The taking of antihypertensive agents [drugs] ... was much higher in [areas with higher jet noise] ". VI.

"There might be a cumulation of effect by repeated exposure for long periods. Pathological effects (i.e., hypertension) may result, first in those subjects which react more strongly to noise exposure or in subjects exposed also to other stressors with similar effects." IX.

HYPERTENSION - cardiovascular disease

Based on a community cardiovascular survey:

"In areas with more aircraft noise, more people were under medical treatment for heart trouble and hypertension and ... took cardiovascular drugs. ". V.

Based on a study on the relation between aircraft noise and the contact rate with the general [medical] practitioner:

"For cardiovascular drugs, a ... trend was found ..." [that the taking of these drugs had gradually increased to twice the initial amount; the increase continued even after there was a change of jet routes which removed nearly all aircraft noise during the night.] VII.

"Noise can [redacted] cular functions; especially the increase of dias[redacted]ure is striking." VIII.

HYPERTENSION [redacted]

Regarding "ant[redacted]iption, in a period of six years [of new aircraft noise] the purchase had gradually increased to twice the initial amount; the increase continued during the years, when there was almost no aircraft noise during the night." VII.

"The data on antihypertensive agents complete the evidence that aircraft noise is a risk factor to hypertension". This can be manifested by - but not limited to - gastric ulcers. VII.

[Aircraft noise] "may be a causal factor to stomach complaints and to hypertension". VII.

[re]e is "a higher incidence of nervous diseases in very noise areas". VIII.

the

GENERAL MEDICAL PROBLEMS

"The contact rate [between doctors and affected people] for spastic colon and for low back pain was about two times higher in ... " [areas with

hi[redacted] VI.

BIRTH WEIGHT

"Birth weights of 902 infants were related to aircraft noise levels to which the mother was exposed in pregnancy. The results ... [suggest] that aircraft noise can decrease birth weight.". X.

SLEEP AND GENERAL HEALTH RISKS

"In areas with more aircraft noise, the use of sedatives [sleeping pills] and hypnotics ... was higher." VI.

"In the [jet] noisy village the purchase of hypnotics and sedatives [prescription drugs] had increased in the period after the beginning of aircraft noise, and decreased again, when the number of night flights was diminished." VII.

This study "suggests that aircraft noise has a harmful effect on sleep". VII

"Aircraft noise can cause sleeping disturbances and mental disorders, especially when there is such noise in the night too." VII.

"Aircraft noise diminishes the possibility to communicate and can cause feelings of alienation and anxiety". VIII.

MENTAL DISORDERS

There was "found a higher admission rate ... to a psychiatric hospital in relation to aircraft noise." VIII.

With aircraft noise, "the [medical] practitioner was confronted with [patients having] ... serious psychological problems and with psychomatic syaptoms ..." VI.

"The higher contact rate [by residents in jet] noisy areas [seeing their physicians] was especially clear for mental disorders". VI.

"This result suggests that aircraft noise can be a causal factor to mental disorders, especially when people suffer from sleep disturbances." VII

"Moreover, [from a study of humans subjected to aircraft noise that] it is suggested that aircraft noise during the night has a strong impact on mental health in the daytime". VIII.

OVERALL

"[From] the re[redacted]udies on medical effects of aircraft noise, ... the [redacted]s that aircraft noise ... constitutes a very seriou[redacted]blic health in all its aspects: [affecting] well-be[redacted]isorders, somatic syaptoms and diseases (especially cardiovascular diseases)." VIII.

"In conclusion, this general practice survey indicated strongly that aircraft noise increases the contact rate with the G.P. for psychological and ... psychosomatic problems." VI.

"A higher taking of psychotropic drugs among patients in [jet] noise areas was found. One of the G.P.s [general practitioners] commented [on] this by saying ... 'The place is overwhelmed by aircraft noise ... we can only prescribe drugs.' " VI.

GEN ERAL CAVEATS

"Environmental ... standards should not be based upon the average effect in a group of subjects, because 'average human beings' do not exist, but [rather] subgroups within the population [may be susceptible to jet noise ill effects]. " IV.

[redacted]alth includ[redacted]nly] ... absence of disease [but also] 'well-being'".
VIII.

REFERENCES:

International Archives of Occupational and Environmental Health, Volume 40, Articles I - X (pages 163 - 207), 1977, Springer-Verlag.

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WW
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Van Buren

Daniel P. Gilmartin
Executive Director

October 19, 1990

The Subcommittee on Aviation
of the Public Works and
Transportation Committee
c/o Joseph Italiano, Editor
Room 2165
Rayburn Building 80B
Washington, D.C. 20515

Dear Committee Members:

This letter is written to express the concerns of the Conference of Western Wayne with respect to the Federal Aviation Administration's handling of airport policy. Of particular concern to the Conference of Western Wayne is the fact that at no time during the planning process is local government consulted on potential changes to air traffic procedures which ultimately impact the quality of life in communities that surround airports.

Never has local government's absence in the process been more evident than during the last eleven months in western Wayne County, Michigan. In November of 1989 the FAA made a unilateral change of the flight tracks and departure and arrival profiles at Detroit Wayne County Metropolitan Airport. The FAA explained that the changes were a result of 2 1/2 years of internal planning done in an effort to improve the safety of the airspace. While the Conference of Western Wayne members are extremely concerned about airspace safety, the FAA's changes were done without regard for the impact that they would have on those citizens at the ground level that are adversely effected by overflying aircraft. Since the November 1987 change the vast majority of our communities are experiencing noise problems at a much greater level than ever before.

The Conference of Western Wayne is concerned that the FAA is empowered to make such dramatic changes without first consulting community leaders.

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In the case of western Wayne County, these changes were particularly disturbing due to the fact that a comprehensive environmental impact study on the airport expansion had just been completed when the changes were implemented. That study, which cost thousands of dollars and was to be this region's chief tool in estimating the future impact of the airport, is now for the most part flawed and of little significance given the present situation.

Now, due mainly to the heavy noise problem in western Wayne County, the future of Metro Airport depends on a referendum vote which will take place this November.

Much of this could have been avoided had the FAA first consulted with local officials before implementing air traffic changes. While the FAA unquestionably possesses an expertise in air traffic safety matters, local officials are more able to represent how the potential changes bode within the community. In the case of Metro Airport, local officials would have quickly relayed to the FAA that the new tracts created a potentially controversial situation for nearby residents in heavily populated areas. This process would have allowed the FAA and the local leadership to address the problem and seek solutions before the changes were implemented. As it stands, the present situation has digressed to the FAA having to justify its position to local officials while those local officials are put in a position of attempting to defend the need for an airport to their constituents.

The FAA, to its compliment, has for the first time included an outside authority on a task force to mitigate noise. A member of the Wayne County Executive's staff is currently serving on a "SWAT" team that also includes FAA officials and an airline representative. While this is a limited breakthrough, it is important to note that in this case Wayne County also serves as the airport operator. The Conference of Western Wayne is supportive of Wayne County's efforts to mitigate noise, but the goals of a County and of an airport operator do not always parallel those of officials who serve local constituencies. Only when local officials become involved will these planning groups have a total understanding of the effects of airport policies on the community.

Perhaps the experiences of local officials in western Wayne County can serve as a basis for this committee to study the potential for local governmental involvement in the FAA planning process. The Conference of Western Wayne is convinced that in the future local government must have a voice in airport matters which effect the greater community and impact upon the quality of life in the region.

The Conference of Western Wayne wishes to thank this subcommittee for allowing these concerns to be heard.

With respect,

Daniel P. Gilmartin

Executive Director
For the Conference of Western Wayne
Committee on Airport Issues

DPG/bak

THE CONFERENCE OF WESTERN WAYNE

The Conference of Western Wayne (CWW) is a consortium of eighteen western Wayne County communities. Established in 1980, the objective of the Conference is to improve local government and administration through cooperative effort. Each month the CWW Board of Directors, composed of the chief elected officials of member municipalities, meet to discuss mutual problems, share information and work cooperatively towards enhancing the quality of life for the 660,000 residents who reside in the area.

The communities that comprise CWW represent a broad spectrum. Encompassing approximately 340 square miles, CWW communities stretch from the City of Detroit to the boundaries of Oakland, Washtenaw and Monroe Counties. Member communities range from rural, agricultural areas to densely populated urban municipalities.

Although each individual community has unique concerns and needs, there are many regional issues that are best served by the individual units of government working together. Issues such as transportation, land use, solid waste management, air and water quality, community and economic development, and public safety are multijurisdictional by nature and impact on all municipalities.

The Conference serves as a collective program planner and developmental entity and provides a forum for the discussion and review of such issues of concern. In an

attempt to formulate effective programs and policies, the CWW staff often forms in-house advisory committees of municipal employees with appropriate skills and experience. CWW committees include E-9-1-1 (Police Chiefs), Personnel (Municipal Personnel Directors), Solid Waste (Public Works Directors and Solid Waste/Environmental Coordinators) and many others.

Past CWW programs and services range from implementing an Enhanced 9-1-1 telephone emergency service to administering and coordinating various community service programs designed to offer assistance to low income residents, youths and senior citizens.

Another major function of the Conference is to serve as the access point for funneling information to local units from regional, state and federal agencies. In addition, CWW works as a liaison between local government and service organizations by representing its members on various committees and organization boards.

The Conference is a non-profit agency that is supported financially through membership dues, service fees and grant and foundation funding. Membership dues are based on a fixed fee with a co-efficient per capita factor added.

CWW member communities include the City of Dearborn, City of Dearborn Heights, City of Garden City, City of Inkster, City of Livonia, City of Plymouth, City of Romulus, City of Wayne, City of Westland, City of Belleville, Canton Township, Huron Township, Northville, Township, Plymouth Tow;nship, Redford Township, Sumpter Township, and Van Buren Township.

To: Aviation Subcommittee of the House Public Works and Transportation Committee

Honorable James L. Oberstar, Chairman

Dear Congressman Oberstar:

This concerns the hearing the Aviation Subcommittee had on October 4, 1990 in which Mr. Tom Greer, Director of Airport Services for the Burbank-Glendale-Pasadena airport, commented concerning the passenger facility charges, a national noise policy and the Burbank airport in general.

I have testified in the past to a congressional subcommittee about the Burbank-Glendale-Pasadena airport, as a concerned citizen representing many residents affected by this airport. I was not aware of this particular meeting. Under these circumstances, I hope you will also accept my comments as you did Mr. Greer's. My background is that of a retired Lockheed engineer who worked on the Technical Advisory Committee of this airport's far part 150 noise study for about three years. I am also a member of the LAX Airport Citizen's Advisory Committee, appointed by a member of the Los Angeles City Council.

I would like to comment on the written remarks Mr. Greer presented to your committee. Not being at the hearing, I am unable to comment on any "question and answer" remarks or any additional comments Mr. Greer made, if any. I thought that Mr. Greer's report was an excellent one and with the interpretation of the numbers he used, he was able to paint a beautiful picture of the environment created by the airport which, I am sure, pleased the people he represents - the Burbank-Glendale-Pasadena airport authority. Unfortunately, this is not the real environment experienced by several thousand people who live in the east end of San Fernando Valley and are affected by the noise (and safety considerations) from this airport.

Below are several subjects mentioned by Mr. Greer which I would like to call to your attention:

<u>Replacing the Terminal</u>

"The primary impediment to the project (replacing the terminal) thus far has been the unavailability of an appropriate site". The Burbank-Glendale-Pasadena airport authority already own land in the northwest and southwest quadrant of the runway intersection for which they have a plan view design for a split terminal and aircraft parking. Before this design concept was made public one of the airport commissioners told me it was one that everyone would like - and I agree.

Conclusion: The Burbank-Glendale-Pasadena airport authority does not need money to buy an "appropriate site".

Major Safety Issue/Capacity Enhancement

"With this land (they want to buy) the airport authority can address a major safety issue that has for too long gone unresolved, and at the same time will lay the foundation for much needed capacity enhancements . . . ." Further along in his report he states "Thus there is still unused capacity available for any carrier that wants it" and ". . . all while preserving the ability to meet increased demand".

Conclusion: Mr. Greer wants to increase his business utilizing the "unused capacity available" in spite of the fact that he says there is "a major safety issue". This is a safety attitude not appreciated by the people in the vicinity of the airport. Also, the Burbank-Glendale-Pasadena airport authority does not only want more land for a terminal, but also for "capacity enhancement" when they already have ample "unused capacity"!

Phase-in of Stage 3 Aircraft at Burbank

The airport authority required the phase-in of stage 3 aircraft starting in 1982. By 1987, it became 100% stage 3, which are quieter and more fuel efficient. This is the one thing the airport authority has accomplished for noise abatement, for which the community thanked them. Unfortunately, stage 3 aircraft didn't solve the problem -- though less intrusive than stage 2 aircraft, they are still intrusive. During the period that more and more stage 3 aircraft were being used, including 100% stage 3, there were more and more complaints from the affected community! In a short period of time, 10,000 to 11,000 signature complaints were obtained which probably sounds strange. Not really. They were adding more and more flights when the number of flights (single events) are doubled, the people hear twice as much noise! (Though not the fault of Mr. Greer, it is very unfortunate that the CNEL (community noise equivalent level) is used in the measurement of noise around an airport. The CNEL noise measurement averages the noise for a period of time, by a machine, and this is used to develop noise exposure maps. This is not a true representation of what a human hears because a human ear does not hear an average noise - it hears a "single event" times the number of single events a day which is quite different than an average.)

Mr. Greer noted that as a result of stage 3 phase-in, there was in 1989 "a reduction of 85.5% from the 1985 levels" in the number of noise complaint phone calls. I submit that this was not the reason. The reason is that after several years of making phone call complaints with no apparent reduction in noise intrusion, the people are feeling it is a waste of time to make the calls.

Conclusion: Stage 3 aircraft have not solved the noise problem. More flights (single events) can be made with stage 3 aircraft than with stage 2 aircraft and produce the same number of incompatible land acres around the airport. Therefore, we hear more single events.

Burbank Airport's FAR Part 150 Study

In FAR Part 150 studies you first develop ideas for noise abatement. This means to reduce the noise itself such as using quieter engines. Next you develop ideas for noise MITIGATION of the noise left after abatement. An example would be soundproofing homes in the affected area.

FAR Part 150 studies are made up of a technical committee and a political committee. The technical committee develops ideas, elevates them to the political committee and they elevate the ones they approve to the airport authority. Unfortunately, the airport authority has the right to use all of them, some of them or none of them!

The Burbank FAR Part 150 study lasted about three years and I was part of the technical committee. After three years of work of the FAR Part 150 study, not one of the noise abatement ideas that affected jet airliners landing and departure noise were approved by the airport authority and thus were not recommended in the airport authority's report to the FAA! Among the noise abatement ideas approved by the 150 study was a "preferential runway" proposal. Over 130 preferential runway ideas have been approved by the FAA for airports in the United States. The one in our 150 study actually reduced the number of incompatible land acres around the airport. Local citizens and the Los Angeles City Council wrote to the FAA Director of the Western Region asking him not to approve the FAR Part 150 study report submitted to him by the airport authority until it contained some noise abatement ideas approved in the study. The report was approved as submitted!

Conclusion: The FAR Part 150 study was not beneficial to any of the affected citizens from a standpoint of noise abatement. From a standpoint of noise mitigation, there is a potential for some of the homes to be soundproofed that are affected by noise intrusion. Finally, I would like to comment on the passenger facility charge and a national noise policy.

Passenger Facility Charge

As you know, we already have the Aviation Trust Fund which is funded by a tax on airline tickets. It would seem that another tax on airline tickets would not be necessary. Congress should permit the unrestricted flow of the Aviation Trust Fund monies to the FAA. The FAA then could distribute the money to the airports, part of which could be used by the airports for the same purpose the new tax is being considered.

National Noise Policy

We believe an effective airport noise policy can be developed for the nation. However, it should not be restrictive whereby any gains in noise reduction by local airports are negated.

Thank you, Mr. Chairman, for receiving this report and allowing us to present a viewpoint from the noise/safety affected people surrounding the Burbank-Glendale-Pasadena airport.

Jack C. Green

JACK C. GREEN

TESTIMONY OF
DEARBORN MAYOR
MICHAEL A. GUIDO
TO THE
PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
REGARDING A FEDERAL AVIATION NOISE POLICY

SUBMITTED BY:

DEARBORN MAYOR
MICHAEL A. GUIDO
CITY HALL
13615 MICHIGAN AVENUE
DEARBORN, MICHIGAN 48126
(313) 943-2300
OCTOBER 4, 1990

Mr. Chairman and honorable members of this committee:

My name is Michael A. Guido. I'm the Mayor of the City of Dearborn, Michigan, a suburb in Wayne County. Dearborn is located approximately seven miles from Metropolitan Airport.

I came here today to inform you of an injustice that's being perpetrated on thousands of residents in Dearborn, Michigan and countless others across this great country. I'm talking about one of the most frustrating forms of noise pollution--airplane noise. The problem is especially irritating when it's a new problem.

The scenarios go something like this: In one neighborhood, a beautiful Georgian-style colonial rests on a small rise in the middle of a quiet, winding street. A young couple and their two children are inside the house, enjoying the amenities of the new home which they've just purchased. Although the mortgage payments are steep, and they drained almost all of their financial resources to make the down payment, the couple is comfortable knowing that they bought into a solid neighborhood which will offer the quality environment they want for themselves and their children.

Suddenly, their tranquility is ripped away from them. Their quality of life is shattered and the integrity of their single largest investment is shaken. Without warning and

with no chance to protect themselves or their family, the couple has been devastated.

Four miles away, in another part of the city, on a narrow, tree-lined street, an elderly couple sit in their modest, well-kept home listening to the evening news. They're looking forward to their retirement--picking up past hobbies, entertaining the grandchildren, and enjoying long, peaceful evenings.

Suddenly, their tranquility is taken from them, too. Their dream of peaceful days turns into a nightmare. They become prisoners in a home they once viewed as their place to escape.

Are these scenarios melodramatic? I've got hundreds of letters and copies of FOR SALE notices that suggest otherwise. Yet, some would rationalize this is merely the price of progress. I submit that this country has the wherewithal to realize progress without exacting such a terrible toll on its citizens.

In America, the home always has been considered a sacred place. It's part of the American dream. Nowadays, as crime and the cost of living increase, more and more people are spending the majority of their nonworking hours at home. Social scientists call this trend cocooning.

By ruining this environment, we are taking away the only real alternative many people have to escape the tough realities in today's world.

That's why there's such outrage over the airplane noise issue. Without warnings, without explanations, and certainly without apologies, people's lives are being ruined.

That's unfair. And the system that breeds this type of situation is unfair.

The history that has led us to where we are today is checkered at best. The citizens of Dearborn have peacefully coexisted with Metropolitan Airport for more than forty years. This coexistence has meant that some of our neighborhoods have put up with airplane traffic for a long time. However, in the past, the people in these neighborhoods have never had to deal with the incredible noise and number of airplanes flying over their homes since November 1989. That is when the FAA unilaterally decided to change flight patterns and direct low flying, hard thrusting aircraft over a large portion of our city.

Since that decision, we have been lied to, yelled at, and generally dismissed by those in a position to resolve this issue. Unfortunately, it's now evolved into an "us-against-them" conflict. The FAA is reluctant to abandon the changes

they made for safety reasons. County officals are reluctant to implement excessive noise abatement measures for fear of placing undue hardships on airlines using Metropolitan Airport. Dearborn and Wayne county residents feel as if they were blindly robbed of something of extreme value--their quality of life and integrity of their property.

Any system that leads to this type of result is a bad system.

Rather than solutions, it leads to problems. And, we in Dearborn have a real problem--a problem we hope that other American cities and other American citizens do not have to experience, or suffer through.

It's obvious that we need a national policy to regulate air/noise pollution. Such a policy would go a long way toward avoiding future problems such as the one I've been describing. But, in establishing this policy, we must also be given the mechanisms to solve existing local problems today.

Noise caps, curfews, bans on louder aircraft, and other noise abatement measures all have been proposed and discussed as possible solutions at Metropolitan Airport. Alternatives are available. The impetus to pursue them is missing.

This is not a Dearborn problem. This is not a Wayne county

problem. This is a national problem that's going to take national initiative, responsible leadership, and courage to resolve.

For all of those desperate people who's lives, fortunes, and happiness hang in the balance, it must be resolved.

TESTIMONY OF:

A. P. Jurgensen
709 Bryant St.
Paramus, N. M. 07652
(201) 652-6224

September 21, 1990

Mr. Chairman and Members of the
Sub Committee on Aviation
U. S. House of Representatives
Washington, D. C.

I appreciate this opportunity to bring to your attention certain facts about excessive aircraft noise in New Jersey, and studies showing its harmful effects on human health.

1. From 1987 when the FAA implemented the EECP without an impact study or public hearing, aircraft noise over New Jersey increased from an annoyance in 1988 to an outrage in 1989 and an abomination in 1990. Residents have been bombarded with noise readings up to 94 decibels day after day and into the night. Many residents have already sold their homes and moved away from New Jersey to quieter areas.

   The attached exhibit A shows aircraft noise levels on days when I was here to record them with a sound level meter. They cover the period from March 14, 1990 to June 11, 1990, which is typical of aircraft noise throughout the year over Northern New Jersey.

2. Studies have shown that aircraft noise from low flying jets is not just an annoyance but is a health hazard, and involves sleeplessness, hypertension, cardiovascular problems, nutritional problems for foetuses, birth defects, such as lower birth weights for female babies born in high aircraft noise areas, hearing loss, and a 40% increase in psychiatric hospital admissions due to exposure to high aircraft noise. These facts are shocking.

   Summaries of these studies are appended to this statement as Exhibits B-O, excluding Exhibit L, which relates to property values, Exhibit C for source of materials, and Exhibit N, recommended sound levels for living spaces.

3. Aircraft noise adversely affects students' health and performance. Higher blood pressure and poorer reading ability are found in studies referred to in Exhibit M.

4. High aircraft noise found to decrease property values. Exhibit L.

5. Yet despite the warnings contained in this evidence, the FAA has done nothing to protect American citizens from this health hazard.

   Indeed, instead of reducing air traffic noise the FAA is telling us that it actually will be increased, and the public should be educated to expect it!

   In a statement to the Senate SubCommittee on Transportation (Appropriations) on May 3, 1990, the FAA Administrator said, "As the number of aircraft in our system increases, noise is bound to increase: We cannot make it go away."

   At the same hearing another FAA official refers to "developing tools that would take the place of bills introduced into Congress" (to reduce aircraft noise). The FAA would not only usurp the rights of states to restrict aircraft noise to protect their citizens, but also prevent members of Congress from passing legislation to protect citizens in all states

   One FAA official suggests that if people find aircraft noise objectionable, "They can soundproof their residences:" (at a cost of thousands of dollars). Same hearing.

   These statements by FAA officials show a cold indifference to the health and welfare of the people of New Jersey and inevitably, since excessive aircraft noise is a spreading disease, to all the people of the United States.

   We therefore strongly urge you to enact legislation which will restore peace and quiet to their homes

and property. Specifically:

1. Rescind the EECP. Established arbitrarily without an impact study or a public hearing.
2. Establish a minimum altitude for jet aircraft of 12,000 feet over residential areas of New Jersey, and other states which have an aircraft noise problem, such as California, Illinois, Texas, etc.. The FAA standard of 3,000 feet is the serious problem. The FAA admits it doesn't know how the 3,000 foot altitude was set. "The people who established it 15 years ago are no longer here." Unquote.
3. Set a maximum decibel level of 50 LDN, instead of the 65 LDN the FAA wants in a "National Noise Policy." 65 LDN allows for many hours of 80-95 decibel thunder. "At only 55 LDN, 55% of the population is a little or more annoyed." See Exhibit P, GAO Study.
4. Utilize all industrial and waterways space and unused military airspace where available, instead of overflying residential areas. Since Newark, New Jersey plane movement actually decreased from 400,130 in 1986 to only 360,000 in 1989, the rationale for overflying residential areas becomes suspect.

Implementing such legislation would reduce the distress that 7,500,000 people in New Jersey have had to endure since the EECP was implemented in 1987. The protests of tens of thousands of New Jerseyans have been ignored by the FAA. Please don't let it be Today New Jersey, tomorrow the United States.

We therefore implore you to give us legislative relief as proposed. Today the noise problem is in New Jersey, Illinois, and California, among other states. Next year it may be your state. Thank you.

Sincerely,

A. P. Jurgensen

Enclosures:
Exhibits A - P

TESTIMONY

A. P. Jurgensen
709 Bryant St.
Paramus, N. J 07652

Tel: 201-652-6224

EXHIBITS:

A. Measured Jet Aircraft Noise Level

B Aircraft Noise and Psychiatric Hospital Admission Rates (Psychological Medicine, May 1990) Up 40%

C. Sources of Materials in Exhibits

D. Effects of Aircraft Noise (from "Ear Protection" to "Wish to Move Away")

E. Physician Contact Rate re Disorders Related to Aircraft Noise

F. Increased Use of Drugs in High Aircraft Noise Areas

G. Blood Pressure of Students in Reaction to Intruding Street Noise

H. Effect ofHigh Aircraft Noise on Nutrition of Foetus (HPL Levels) During Months of Pregnancy)

I. Effect of Aircraft Noise on Birth Weight of Female Babies

J. Reactions of U. S. Population to Aircraft Noise

K. Percent of People Who Complained About Aircraft Noise as a Function of the Percent Highly Annoyed

L. Depreciation of House values as Function of Aircraft Noise

M. Student Achievement Related to Community Noise Level

N. Sound Level Recommendations for Various Residential Spaces

O. Graph Showing Effects of Aircraft Noise on Annoyance, Health, Housing Values, and Complaint Activity.

P. Levels of Population Highly Annoyed by Aircraft Noise: "55% of Population a Little or More Annoyed at LDN of 55 decibels." GAO Report "Transportation Noise" October 1989

EXHIBIT A

JET AIRCRAFT NOISE OVER NW PARAMUS, N.J. 07652
logged by A. P. Jurgensen
Senta J. Jurgensen

1990

March 14 10:35 p.m. to 12:45 a.m.
Counted 38 big low-flying jets W-E, more until 2:40 a.m.
Stopped counting - impossible to get back to sleep.
Sound level - up to 86 Dbs., and some to 90 Dbs.

March 22 Late afternoon 4-6 p.m.
Counted 122 low-flying jets in 2 hours W-E (toward Newark)
up to 94 DBs.
Evening, 10:15 p.m. to 12:40 a.m. and into small hours
of morning - no sleep
up to 86 Dbs.

March 23 Heavy jet noise all day E-W, in climbing mode, W-E
up to 90 Dbs.

April 6 3:20 a.m. Big, low-flying jet awakened us W-E?
3:30 a.m. no sleep
3:35 a.m. up to 86 Dbs. (from window)

April 14 Stream of low-flying jets heavy traffic E-W early AM
and later, E-W in climbing mode, then W-E & W-SE, very noisy
up to 92 Dbs., some 94 Dbs.

April 16 heavy jet air noise all day, low fly, W-E,E-W, both
directions from Newark & LaGuardia ? in climbing mode
up to 90 Dbs.

April 17 Jet noise from 6:20 a.m. E-W all day
up to 92 Dbs.
I called FAA Noise Complaint Number 718-917-1022
She took information, and said she would pass on to
flight controllers.

April 21 Heavy jet noise E-W and E-SW from 6:15 a.m. to about
5:30 p.m. (noted) and then evening
up to 86 Dbs. and 94 Dbs. in afternoon!!!

April 27 Very heavy jet noise AM-PM, E-W & W-E, frequently one a minute.
Low fly intolerable, one after another
up to 92 Dbs.

May 1 PM heavy jet noise all PM noted 8 p.m. and later, E-W
about one a minute, many simultaneous in different directions
9:35 p.m., still coming
up to 90 Dbs.

JET AIRCRAFT NOISE - A.P. Jurgensen

May 2 Jet noise into evening - 9:30 p.m.
up to 86 Dbs.

May 3 PM heavy aircraft noise noted to 9:30 p.m. & later
up to 76-90 Dbs.

May 4 6:05 a.m. and thru A.M. Very heavy jet traffice
E-W loud up to 86 Dbs.
Called FAA noise complaint number - tape recorded message
answered - I left complaint.

May 7 Heavy jet air traffic - LOUD
AM E-W, then W-E 8 p.m., still coming W-E
up to 92 Dbs.

May 8 Lots of jets - noted 82 Dbs.

May 10 Loud jet noise - 11 p.m. still roaring overhead
up until about 1 a.m., then 2:10 a.m., 4:15 a.m., noted
up to 90 Dbs. during evening
2:10 a.m. and 4:15 a.m. flights not measured, but woke us
up - no sleep again!

May 11 Heavy jet noise EW & WE simultaneous, multi-layered
up to 94 Dbs.

May 12 Heavy jet noise AM and early afternoon, E-W and W-e
up to 92 Dbs.

May 13 Early AM into PM E-W, W-E
3 p.m. - 4 p.m., one plane after another, multi-layered
simultaneous, about 60 planes per hour over us, very heavy noise!
up to 94 Dbs.

May 14 Heavy jet noise E-W A.M.
up to 92 Dbs.

May 15 Early AM to afternoon very heavy jet noise E-W
up to high 80s and 92 Dbs.

May 16 very heavy jet noise up to 90 Dbs.
Called FAA, complained (taped message)

JET AIRCRAFT NOISE A.P. Jurgensen

May 17 Heavy jet noise E-W Climbing
Up to 90 Dbs.

May 18 Very heavy jet noise all day E-W climbing
and PM W-E Up to 94 Dbs.!!
Called FAA again and complained (taped message)

May 19 AM heavy jet noise E-W
Up to 92 Dbs.

May 23 4:50 a.m. loud jet noise overhead awakened me from sleep
W-E (to Newark?)
Up to 84 Dbs. (from window)

May 24 Heavy jet noise noon, afternoon, all evening,
One after another W-E
Up to 88 Dbs.

May 25 Early a.m. 6:30a.m. heavy jet noise, continuous until
about 10 A.m. overhead, up to 88 Dbs. then NE p.m.

May 29 Heavy aircraft noise A.M E-W
Up to 86 Dbs.

May 31 from about 12 Noon heavy jet noise E-W & W-E
Now 6:45 p.m.
Up to 88 Dbs.

From 7:45 p.m., one after another all evening monstrous!!
up to 92 Dbs.

June 2 6:15 a.m. heavy jet noise all AM E-W
up to 86 Dbs.

June 4 Series of low flying climbing jets E-W
over house NOISE!!
up to 88 Dbs.
Called FAA Noise Abatement number again 718-917-1022
Filed complaint with girl on phone.

June 11 Awakened at 2:15 a.m., loud jet noise, more loud jet noise
3:20 a.m., then 5:45 a.m., lost more sleep.
Called Muldoon at Port Authority and complained. He repeated the complaint back to me, reading "that was at 2:15 a.m, 3:20 a.m." as though writing it down. He said he would forward complaint, said Port Authority does not set flight patterns, they are made by FAA, and Port Authority passes complaints to FAA.

EXHIBIT B

SEE P. 411

Psychological Medicine, 1990, 20, 395–411
Printed in Great Britain

Aircraft noise and social factors in psychiatric hospital admission rates: a re-examination of some data

KARL D. KRYTER[1]

From the SRI International, Menlo Park, CA, USA

SYNOPSIS Jenkins *et al.* (1981) published data on rates of admission to three psychiatric hospitals for 12 large samples of people living near London's Heathrow Airport. The percentages of people who were classified as being affluent, living alone, males having moved within last five years, unemployed, and immigrants, as well as the levels of aircraft noise to which they were exposed, were given for each of the samples. Multiple-correlation analyses revealed the following: (1) movement of males in the previous five years was not generally associated with hospital admission rates; (2) immigrant status, living alone, and affluence were negatively, and generally statistically significantly, associated with admission rates; and (3) unemployment and level of exposure to aircraft noise were positively, and generally statistically significantly, associated with admission rates. Unlike the conclusion reached by Jenkins *et al.*, it is concluded from the present analysis of their data that there are statistically significant associations between psychiatric hospital admission rates and level of exposure to aircraft noise. This difference in findings appears to be due to a more comprehensive assessment of the interrelations of all the tested socioeconomic and aircraft noise variables by the multiple-correlation procedure used in the present analysis, in comparison with the graphic modelling assessment applied by Jenkins *et al.* to a limited portion of the socioeconomic data. Together, the five socioeconomic and aircraft noise variables correlate at about 0·98 with hospitalization rates for most population groups.

INTRODUCTION

There is considerable evidence of a positive relation between exposure to aircraft noise in residential environments and various health disorders. For example, surveys by Grandjean *et al.* (1976), Knipschild (1977*a*, *b*) and Knipschild & Oudshoorn (1977) reveal a general positive relation between exposure level to aircraft noise and various cardiovascular and psychosomatic disorders, and research studies of Ando & Hattori (1974, 1977), Knipschild *et al.* (1981) and Schell (1981) indicate adverse effects of the aircraft noise on the development of, or nutriments for, the human foetus. These disorders, according to one theory, are presumed to be the result of psychological and physiological stress resulting from annoyance and fear engendered by exposure to the noise over months or years (Kryter, 1985). The effects on the development of a foetus presumably ensue as the result of the mother's stress reactions to the noise.

Several research studies indicate that the presence of intense aircraft noise is associated with an increase in admission rates to psychiatric hospitals. The statistical probability for the existence of such a positive relation was found, with $< 10\%$ probability of chance error, in the study conducted in the USA by Meecham & Smith (1977). Studies conducted in England by Abey-Wickrama *et al.* (1969) found statistical significance ($< 10\%$ probability of chance error) in this regard for some populations. However, a follow-up analysis by Gattoni & Tarnopolsky (1973) of a somewhat enlarged database for the same neighbourhoods showed consistently

[1] Address for correspondence: Dr Karl D. Kryter, POB 1017, Borrego Springs, CA 92004, USA.

positive, but statistically insignificant, relations between hospital admission rates and the level of aircraft noise in the neighbourhoods in which the patients had resided.

The hypothesis that exposure to aircraft noise can contribute to admissions to psychiatric hospitals was to some extent challenged by an analysis by Jenkins *et al.* (1981) of data collected from the same areas involved in the Gattoni & Tarnopolsky analysis. Jenkins *et al.* found that for two psychiatric hospitals there was a more or less monotonic increase in admission rates as a function of the exposure level of aircraft noise, but that in a third hospital an opposite relation held: the less the noise the greater the admission rate. They concluded that 'if any aircraft noise effect exists, it is a subtle one that interacts with many other causal factors'.

The magnitude and scope of its database makes the Jenkins *et al.* study well founded for the assessment of the validity of the hypothesis that psychological–physiological stress from certain socioeconomic factors and intense aircraft noise can be associated with mental health disorders. The Jenkins *et al.* study utilized the hospital admission rate data for a total population of nearly 1 000 000 people, provided data on some five different socioeconomic variables, and sampled, for all practical purposes, the full range of levels of aircraft noise to be found in residential areas. For these reasons, and because Jenkins *et al.* did not fully examine statistical relations between aircraft noise, socioeconomic conditions and psychiatric hospital admission rates, the present analysis was undertaken.

BACKGROUND TO THE DATA

As described by Jenkins *et al.*, 12 residential areas, covering a roughly rectangular area of 32×26 kilometres, were chosen for study. Socioeconomic data were provided by the British Office of Population Censuses and Surveys. Table 1 presents the numbers of persons at risk in various groups distributed among the 12 residential areas, along with the screened numbers of persons admitted from each area to the three psychiatric hospitals that serviced those areas.

Jenkins *et al.* screened from the hospital admission records the data for those persons whose home address could not be verified as being within one of the 12 chosen areas. The screening process removed from study 18% of the legitimate number of admitted patients. Table 2 gives the screened admission rates per 1000 at risk (labelled AR) to the three hospitals for different population groupings over a 4-year period (1 January 1969–31 December 1972).

The socioeconomic data consisted of the following information (in percentages) for each of the 12 areas: males moved in last 5 years; one-person households; owner-occupied households; renting from local authority; private households with all amenities (exclusive use of indoor toilet); high occupational class (professional, managerial, employers); unemployed; and immigrants (persons born outside the United Kingdom and Ireland). For this analysis, the average of the data for 'owner-occupied', plus 'households with all amenities exclusive', plus 'high occupational class', minus 'renting from local authority' was derived as a possible indicator of relative economic affluence in a given area. This derived index is labelled as 'percentage affluent'. The percentage of males in an area who had moved within the past 5 years was presumed to be something of an index of the relative number of migrants living in a particular residential area. The socioeconomic data used in this analysis are given in Table 2 under 'Independent Variables'.

In the Jenkins *et al.* report, the aircraft noise exposure level is given as the Noise and Number Index (NNI), a measure used in Great Britain for quantifying the effective exposure of people living near commercial airports to aircraft noise. The NNI is a measure that takes into account both the intensity level and the number of occurrences of aircraft flyover noises found at different points on the ground. These noise data were supplied to Jenkins *et al.* in the form of noise 'contours' for the areas involved by the British Civil Aviation Authority. For the aircraft operations involved, the NNI is only approximately convertible into Ldn in decibels (dB), a measure used in the United States and similar in basic respects to NNI. Ldn stands for 'level-day–night', and consists of the A-weighted average one-second sound energy of aircraft noise over 24 hours, plus a night-time 'penalty' of 10 dB for aircraft noise events occurring between the hours of 10 p.m. and 7 a.m. One difference between NNI and Ldn is that the

Table 1. *Numbers of people at risk and psychiatric hospital admissions for 12 residential areas near London*

	Springfield Hospital				St Bernard's Hospital				Holloway Hospital				
Resident area	1	2	3	4	5	6	7	8	9	10	11	12	Totals
Females, married													
−45 yrs at risk	11673	37629	9160	5747	38929	34961	16541	3967	3697	9172	3257	218	174951
No. admitted	120	294	53	18	308	275	172	42	36	86	39	2	1445
+45 yrs at risk	10807	38914	10089	5468	36804	28012	13705	2947	3032	8524	3400	232	161934
No. admitted	69	251	52	23	271	241	123	33	15	92	42	3	1215
Females, not married													
−45 yrs at risk	7806	24744	4663	2883	16031	13408	6726	1450	1181	3610	1424	96	84022
No. admitted	134	366	34	14	148	128	109	24	8	70	33	1	1069
+45 yrs at risk	6603	29186	6069	3155	17644	13628	7290	1451	1425	4500	1790	175	92916
No. admitted	116	428	76	48	313	234	175	24	38	106	71	10	1639
Males, married													
−45 yrs at risk	10265	32936	7920	5209	33914	30967	14781	3485	3213	7931	2786	187	153594
No. admitted	52	145	20	15	106	140	82	19	8	52	21	1	661
+45 yrs at risk	12099	43361	11179	6129	41246	32142	15692	3409	3427	9588	3836	255	182363
No. admitted	64	178	43	22	188	207	109	26	18	74	35	2	966
Males, not married													
−45 yrs at risk	9456	31645	6067	3937	21127	18571	9577	1850	1670	4769	1995	135	110799
No. admitted	129	391	47	31	162	178	110	24	8	55	29	2	1166
+45 yrs at risk	2535	10898	1982	1091	5546	4734	2556	534	446	1413	625	62	32422
No. admitted	67	198	39	20	92	81	52	9	14	44	32	2	650
All persons under 45 years													
No. at risk	39200	126954	27810	17776	110001	97907	47625	10752	9761	25482	9462	636	523366
No. admitted	435	1196	154	78	724	721	473	109	60	263	122	6	4341
All persons over 45 years													
No. at risk	32044	122359	29319	15843	101240	78516	39243	8341	8330	24025	9651	724	469635
No. admitted	316	1055	210	113	864	763	459	92	85	316	180	17	4470
All females													
No. at risk	36889	130473	29981	17253	109408	90009	44262	9815	9335	25806	9871	721	513823
No. admitted	439	1339	205	103	1040	878	579	123	97	354	185	16	5358
All males													
No. at risk	34355	118840	27148	16366	101833	86414	42606	9278	8756	23701	9242	639	479178
No. admitted	312	912	149	88	548	606	353	78	48	225	117	7	3443
All married persons													
No. at risk	44844	152840	34348	22553	150893	126082	60719	13808	13369	35215	13279	892	672842
No. admitted	305	868	168	78	873	863	486	120	77	304	137	8	4287
All not married persons													
No. at risk	26400	96473	18781	11066	60348	50341	26149	5285	4722	14292	5834	468	320159
No. admitted	446	1383	196	113	715	621	446	81	68	275	165	15	4524
All persons													
No. at risk	71244	249313	57129	33619	211241	176423	86868	19093	18091	49507	19113	1360	993001
No. admitted	751	2251	364	191	1588	1484	932	201	145	579	302	23	8811

The data for under and over 45-year-old females and males, not-married and married, are from Jenkins *et al.* 1981.

effective noise exposure is taken to be proportional to 15 log base 10, number of aircraft noise events in the calculation of NNI, but 10 log base 10, for Ldn. Throughout this paper all logarithms (logs) are base 10.

The 12 residential areas were selected by Jenkins *et al.* so that there was in each of the three hospital catchment basins one area exposed to each of the following aircraft noise conditions: NNI did not exceed 35; NNI ranged from 35 to 44; NNI ranged from 45 to 54; NNI exceeded 54. Knowledge of the aircraft operations at, and the distances of the residential areas involved from, London Heathrow Airport indicates that the NNI levels given in the Jenkins *et al.* study can be fairly converted for this analysis to Ldn

Table 2. *Admission rates per* 1000 (*AR*) *for various population groups in each of the* 12 *residential areas, also, % and log values for socioeconomic and aircraft noise conditions present in the* 12 *residential areas*

	Springfield Hospital				St Bernard's Hospital				Holloway Hospital			
	1	2	3	4	5	6	7	8	9	10	11	12
Females, married												
−45 yrs AR	10·280	7·813	5·786	3·132	7·912	7·866	10·398	10·587	9·738	9·376	11·974	9·174
+45 yrs AR	6·385	6·450	5·154	4·026	7·363	8·603	8·975	11·213	4·947	10·790	12·353	12·931
Females, not married												
−45 yrs AR	17·166	14·791	7·291	4·856	9·232	9·547	16·206	16·552	6·774	19·390	23·174	10·417
+45 yrs AR	17·568	14·665	12·523	15·210	17·740	17·171	24·005	16·540	26·667	23·560	39·665	57·143
Males, married												
−45 yrs AR	5·066	4·402	2·525	2·880	3·126	4·521	5·548	5·452	2·490	6·557	7·538	5·348
+45 yrs AR	5·290	4·105	3·846	3·589	4·558	6·440	6·946	7·627	5·252	7·718	9·124	7·843
Males, not married												
−45 yrs AR	13·642	12·356	7·747	7·874	7·668	9·585	11·486	12·973	4·790	11·530	14·536	14·815
+45 yrs AR	26·430	18·168	19·677	18·330	16·990	17·110	20·344	16·854	31·390	31·140	51·200	32·258
All −45 yrs AR	11·097	9·421	5·538	4·388	6·582	7·364	9·932	10·138	6·147	10·320	12·894	9·434
All +45 yrs AR	9·861	8·622	7·163	7·132	8·534	9·718	11·696	11·030	10·204	13·150	18·651	23·481
All females AR	11·901	10·263	6·838	5·970	9·506	9·755	13·081	12·532	10·391	13·720	18·742	22·191
All males AR	9·082	7·674	5·488	5·377	5·381	7·031	8·285	8·407	5·482	9·493	12·659	10·955
All married AR	6·801	5·679	4·381	3·459	5·786	6·845	8·004	8·691	5·760	8·633	10·318	8·969
All not married AR	16·894	14·336	10·436	10·210	11·850	12·336	17·056	15·326	14·401	19·240	28·282	32·051
All persons AR	10·541	9·029	6·372	5·682	7·517	8·412	10·729	10·527	8·015	11·695	15·809	16·912
Independent variables (6)												
1% M. moved, 5 yrs	2·01	2·22	2·02	2·19	2·08	2·14	2·14	1·68	3·12	2·32	1·82	1·63
log% M. moved	0·303	0·346	0·305	0·340	0·318	0·330	0·330	0·225	0·494	0·365	0·260	0·212
2% 1-person hlds	9·22	9·76	6·28	5·36	4·42	4·28	5·07	4·62	3·90	4·79	5·20	6·47
log% 1PH	0·965	0·989	0·798	0·729	0·645	0·631	0·705	0·665	0·591	0·680	0·716	0·811
% Home owners	34·47	39·20	60·78	59·64	56·58	56·68	50·50	60·90	68·30	64·58	55·92	59·04
% Govt. renters	28·42	16·31	17·88	19·35	27·56	25·76	25·48	25·23	13·70	16·38	23·93	15·42
% Exclusive WC	77·71	70·54	85·17	85·48	93·19	88·98	86·97	92·84	91·63	90·28	84·64	77·63
% High occup.	13·08	13·82	14·90	11·46	17·22	15·70	13·98	12·22	25·40	21·42	15·05	13·94
3% Affluent*	24·21	26·56	35·74	34·31	34·86	33·90	31·49	35·18	42·91	39·98	32·92	33·80
log% affluent	1·384	1·424	1·553	1·535	1·542	1·53	1·498	1·546	1·633	1·602	1·517	1·529
4% Unemployed†	4·02	3·88	2·27	2·14	2·96	6·90	6·44	2·46	†3·49	†5·39	†4·36	†2·3
log% unempl.	0·604	0·589	0·356	0·330	0·471	0·839	0·809	0·391	0·543	0·732	0·639	0·362
5% Immigrant	16·90	22·14	13·12	33·50	7·72	18·16	16·37	7·50	7·38	8·38	5·47	5·18
log% Imm.	1·228	1·345	1·118	1·525	0·888	1·259	1·214	0·875	0·868	0·923	0·738	0·714
6 Acft. noise, NNI	33	40	50	57	33	40	50	57	33	40	50	57
6 Acft. noise, Ldn‡	58	65	70	77	58	65	70	77	58	65	70	77
Mean % scores	24·21	26·56	35·74	34·31	34·86	33·90	31·49	35·18	42·91	39·98	32·92	33·80
log mean %	1·384	1·424	1·553	1·535	1·542	1·530	1·498	1·546	1·633	1·602	1·517	1·529

* Affluent = mean (% Home owners + % Exclusive use indoor WC + % High occupational class − % Renters)/4.

† Data not available for % unemployed for Holloway. Given are unemployed means for similar Ldn–NNI areas of Springfield and St Bernard's.

‡ Because of no heavy aircraft operations at night at Heathrow Airport, Ldn same as LAeq24hrs.

values as follows: NNI < 35 = Ldn 58; NNI 35–44 = on average Ldn 65; NNI 45–54 = on average Ldn 70; NNI > 55 = Ldn 77.

The use of Ldn 58, rather than <60, and Ldn 77, rather than >75, for the lower and upper levels of aircraft noise neighbourhoods is based on the fact that aircraft noise is seldom less than Ldn 55 or greater than 80 in residential areas near airports. Accordingly, Ldn 58 and 77 respectively represent something of an average for the lower and upper aircraft noise areas. Because night-time commercial jet-aircraft operations were severely limited at Heathrow Airport, these estimated Ldn values are the same as the one-second levels of the aircraft noise averaged over 24 hours and commonly labelled as LAeq24hrs. The NNIs and estimated Ldns for each of the 12 areas are given in Table 2.

Table 3. *Numbers at risk and admitted, and group differences*

Totals at risk

	Females		Males	
	Not married	Married	Not married	Married
Under 45 yrs	84022	174951	110799	153594
Over 45 yrs	92916	161934	32422	182363

Total at risk = 993001
Mean number per population group = 124125

% Difference in totals at risk

Over 45 *v.* under 45 yrs		Not married *v.* married	
Not married, female	11	Female under 45	−108
Married, female	−7	Female over 45	−74
Married, male	19	Male under 45	−39
Not married, male	−71	Male over 45	−462

Admission rates/1000

	Females		Males	
	Not married	Married	Not married	Married
Under 45 yrs	12·956	8·570	10·750	4·621
Over 45 yrs	23·538	8·580	24·958	6·028

% Difference admission rates

Over 45 *v.* under 45 yrs		Not married *v.* married	
Not married, female	82	Female under 45	48
Married, female	0	Female over 45	174
Married, male	30	Male under 45	133
Not married, male	132	Male over 45	310

TREATMENT OF THE DATA AND STATISTICAL CONSIDERATIONS

The socioeconomic variables are represented by percentage, and the hospital admission rate by per millage ratios (numbers of people admitted per 1000 at risk). The log values of these ratios are more likely than the ratios to provide normal distributions of scores among the samples, a pre-requisite for optimum results when linear regression analyses of the data are to be used. Cumulative plots of the occurrences of the ratio scores and their log transforms showed this to be approximately true for most of the variables. Log transformations of the socioeconomic data are given in Table 2. Ldn, of itself, is a logarithmic unit of sound pressure and exposure duration ratios.

A further requirement for general statistical analysis of ratio data is that the smallest number of cases in any set should be 10 (Guilford, 1956). It is seen in Table 1 that this number is less than 10 for only 9 out of the 180 data cells. However, in view of the large number of variables examined in this study, a minimum of 20 or so is perhaps in order. This criterion would be met in all but 23 of the 180 cells in Table 1. In any event, it is assumed that the distributions of the log values for the independent variables are sufficiently normal, and the numbers of people involved in the hospital admissions for the 12 samples of the different groups are sufficiently large, to justify the use of normal probability and linear correlation statistics.

As indicated in Table 2, data for percentage unemployed were not available for the four areas serviced by the Holloway Hospital. Unemployment data for the four Holloway areas were estimated as the average, for a given Ldn-level area, of the percentage unemployed in the same given Ldn-level areas of the Springfield and St Bernard's catchment basins. Multiple correlations were calculated from 12 data samples for all three hospitals and for the eight

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samples from the Springfield and St Bernard's catchment basins.

RESULTS

Not married males over 45

Table 3 shows that there are 108% fewer not-married than married females under 45 years old, 74% fewer not-married than married females over 45 years old, and 39% fewer not-married than married males under 45 years old. In contrast, there are 462% fewer not-married males over 45 than under 45 years old. The admission rate data for the not-married males over 45 years of age is somewhat greater than would be expected, being 132% greater than for the other groups of not-married *versus* married persons regardless of age, and 310% greater than that for the over-45- *versus* under-45-year-old groups regardless of sex.

Age, sex and marital status

It is seen in Table 4 that there are large, statistically significant differences in apparent susceptibility to psychiatric disorders requiring hospitalization between: (*a*) persons under 45 years as compared to over 45 years of age; (*b*) females as compared to males; and (*c*) not-married as compared to married persons. The range in admission rates for the various populations is quite large – from a rate of 4·621 per 1000 at risk for married males under 45 years of age, to 24·958 per 1000 for not-married males over 45 years. Older persons (except for married females where the difference is essentially nil), not-married persons, and females are more susceptible than their counterparts. It is beyond the scope of this analysis to discuss possible bases for these relative susceptibilities, but the rank orders of the data are probably those conventionally expected.

Elimination of one variable

Preliminary multiple-correlation analysis revealed that the beta weights for 'percentage of males moved in past 5 years' were minimal in

Table 4. *Differences between the means of admission rates (AR) for various groups in the population*

Population	Mean, 12 areas AR	Standard deviation (∂)	Standard deviation of mean (∂M)	r, 1st v. 2nd in pair
Females, not married				
Under 45 yrs	12·956	5·707	1·721	
Over 45 yrs	23·538	13·477	4·063	
	Diff. = 10·582	∂Diff. = 4·070	t = 2·600*	r = 0·208
Females, married				
Under 45 yrs	8·670	2·393	0·721	
Over 45 yrs	8·280	2·998	0·904	
	Diff. = 0·39	∂Diff. = 0·700	t = 0·558	r = 0·650
Males, married				
Under 45 yrs	4·621	1·618	0·488	
Over 45 yrs	6·028	1·835	0·553	
	Diff. = 1·407	∂Diff. = 0·270	t = 5·211**	r = 0·874
Males, not married				
Under 45 yrs	10·750	3·185	0·960	
Over 45 yrs	24·958	10·270	3·096	
	Diff. = 14·208	∂Diff. = 2·868	t = 4·954**	r = 0·382
All persons under 45 yrs	8·605	2·556	0·771	
All persons over 45 yrs	11·604	4·862	1·466	
	Diff. = 2·990	∂Diff. = 1·194	t = 2·504*	r = 0·583
All females	12·074	4·608	1·389	
All males	7·941	2·367	0·714	
	Diff. = 4·133	0·821	t = 5·034**	r = 0·890
All married persons	6·564	2·037	0·614	
All not married persons	16·868	6·828	2·058	
	Diff. = 9·924	∂Diff. = 1·607	t = 6·170**	r = 0·803
All persons	10·103	3·948	1·190	

∂Diff. = $\sqrt{\partial M1^2 + \partial M2^2 - 2r^* \partial M1^* \partial M2}$. $\partial M = \partial / \sqrt{N-1}$; N = 12. t = Diff./∂Diff. $r, xy = \Sigma xy / \sqrt{(x^{**} y^2)}$. t, Significant at *0·05 level = 2·201; **0·01 level = 3·106.

Table 5. *Zero-order coefficients of correlation (r) between hospital admission rate (AR) and the independent variables and between the independent variables*

	8 Areas, Springfield and St Bernard's					12 Areas, all three hospitals				
AR *r*:	log % Im.	log % Un.	Lda	log % Aff.	log % I PH	log % Im.	log % Un.	Lda	log % Aff.	log % I PH
Females, married										
(1) Under 45 yr old	−0·545	0·505	−0·308	−0·378	0·055	−0·643	−0·075	−0·210	−0·087	−0·075
(2) Over 45 yr old	−0·622	0·386	0·115	0·168	−0·454	−0·675	−0·152	0·389	0·078	−0·152
Females, not married										
(3) Under 45 yr old	−0·285	0·416	−0·199	−0·613	0·363	−0·319	0·204	−0·012	−0·323	0·204
(4) Over 45 yr old	−0·101	0·664	−0·126	−0·126	−0·296	−0·665	−0·046	0·289	0·146	−0·046
Males, married										
(5) Under 45 yr old	−0·149	0·605	−0·013	−0·437	0·076	−0·378	0·082	0·223	−0·554	0·082
(6) Over 45 yr old	−0·443	0·499	0·171	0·091	−0·433	−0·663	−0·289	0·285	0·135	−0·289
Males, not married										
(7) Under 45 yr old	−0·063	0·340	−0·086	−0·701	0·489	−0·238	0·491	0·360	−0·209	0·490
(8) Over 45 yr old	0·743	0·162	−0·374	−0·737	0·638	−0·598	−0·044	−0·005	0·168	−0·044
Combined population groups										
(9) All under 45 yr	−0·250	0·472	−0·263	−0·658	0·380	−0·399	0·429	0·022	−0·405	0·286
(10) All over 45 yr	−0·346	0·617	−0·011	−0·198	−0·191	−0·689	0·014	0·358	0·072	−0·003
(11) All females	−0·406	0·557	−0·209	−0·410	0·052	−0·701	0·111	0·263	−0·041	0·064
(12) All males	−0·072	0·495	−0·112	−0·653	0·370	−0·491	0·258	0·271	−0·254	0·227
(13) All married	−0·525	0·520	−0·049	−0·141	−0·205	−0·678	0·377	0·186	0·009	−0·131
(14) All not married	−0·164	0·518	−0·200	−0·629	0·311	−0·654	0·045	0·297	−0·050	0·124
(15) All persons	−0·305	0·544	−0·181	−0·512	0·181	−0·652	0·151	0·278	−0·111	0·125
Independent variables										
log % Immigrants	—	0·159	0·177	−0·343	−0·394	—	0·118	0·004	−0·450	0·364
log % Unemployed		—	−0·392	−0·340	−0·040		—	−0·420	−0·133	−0·136
Aircraft noise, Lda			—	0·522	−0·321			—	0·097	−0·017
log % Affluent				—	−0·854				—	−0·837

magnitude and inconsistent in valency with respect to admission rate. This finding applied generally for all the population groups and, for that reason, the data for this variable were not included in the analyses to be presented.

Correlation coefficients

Zero-order, see Table 5, and multiple-correlation coefficients, *R* and *cR*, and attendant beta weights, see Table 6, were calculated for admission rates with the socioeconomic and the aircraft noise variables. The multiple-correlation statistics seem particularly suited to the present data, because the beta weights derived in the calculation of *R* indicate the statistical degree of positive or negative association of each of the independent variables to admission rates, after the correlations to admission rates with, and between, the other independent variables are taken into account. The use of the *cR* formula to attenuate the value of *R* is a conservative procedure dictated by the small number of available data points (Guilford, 1956).

As previously noted, data for percentage unemployed were estimated for the four areas in the catchment basin of Holloway Hospital (see Table 2). Because the use of estimated percentage unemployment data for the areas served by Holloway Hospital could introduce some invalidity in the results for the 12 areas, the correlation analyses were also applied to the data for only the areas of Springfield and St Bernard's Hospitals, as seen in Tables 5 and 6. Table 6 reveals that the socioeconomic plus the aircraft noise variables predict with statistical significance (defined as 0·05 or less probability of chance error) hospital admissions for groups combined by age, sex, or marital status in all but 12 of the 14 *cR*s. Both exceptions occur with the 12-area analysis: *cR* of 0·827 for all persons over 45 years of age, and 0·841 for all not married. The *cR*s of 11 of the 16 *cR*s for the independent sub-groups (females, married, under 45 years of age, females, married, over 45 years of age, etc.) of the population are statistically significant.

Beta weight *t* ratios

As seen in Table 6, for the different numbered population groupings (1, females, married, under 45 years old; 2, females, married, over 45

Table 6. *Multiple (R, cR) coefficients of correlation, and beta weight t-ratios between admission rates to psychiatric hospitals and socioeconomic and aircraft noise conditions in the 8 residential areas of Springfield and St Bernard's hospitals only, and the 12 areas for all 3 hospitals*

				Socioeconomic and aircraft noise variables Beta weight *t*-ratios				
	*R*1 ...*m*	*cR*1 ...*m*	δ*cR*	log % Im.	log % Un.	Ldn	log % Aff.	log % 1 PH
Females, married								
(1) Under 45 yr old								
8 areas	0·997	0·989**	0·015	−14·554**	6·196**	7·06**	−6·701**	−1·775
12 areas	0·919	0·869*	0·092	−4·933**	2·430*	2·780*	−1·607	−0·410
(2) Over 45 yr old								
8 areas	0·976	0·913*	0·318	−4·654**	2·261*	3·407*	−1·698	−1·17
12 areas	0·964	0·943**	0·042	−7·234**	3·931**	5·394**	−1·468	−0·131
Females, not married								
(3) Under 45 yr old								
8 areas	0·997	0·989**	0·015	−12·908**	5·095**	9·980**	−8·016**	−0·705
12 areas	0·829	0·713	0·186	−2·516*	2·365*	1·231	−0·741	0·505
(4) Over 45 yr old								
8 areas	0·840	0·560	0·485	−0·357	0·611	0·569	−1·057	−1·065
12 areas	0·789	0·638	0·224	−2·794*	0·802	1·461	0·130	0·658
Males, married								
(5) Under 45 yr old								
8 areas	0·998	0·993**	0·010	−12·099**	8·125**	14·997**	−11·884**	−5·312**
12 areas	0·915	0·863*	0·097	−3·678**	3·813**	3·218**	−0·915	0·533
(6) Over 45 yr old								
8 areas	0·986	0·950**	0·069	−4·964**	3·084*	5·044**	−2·975*	−2·240
12 areas	0·971	0·954**	0·034	−7·442**	5·400**	5·409**	−1·278	−3·530**
Males, not married								
(7) Under 45 yr old								
8 areas	0·988	0·957**	0·059	−4·884**	1·603	5·559**	−4·637**	−0·736
12 areas	0·966	0·946**	0·040	−5·718**	3·437**	5·279**	−2·730*	1·404
(8) Over 45 yr old								
8 areas	0·746	0·000	1·000	0·403	−0·240	−0·028	−0·678	−0·141
12 areas	0·699	0·443	0·304	−2·136	1·059	0·440	0·431	0·813
Combined population groups								
(9) All under 45 yr								
8 areas	0·999	0·996**	0·005	−19·339**	29·345**	51·814**	−47·975**	−6·812**
12 areas	0·932	0·891*	0·078	−4·743**	3·419**	2·080	−1·439	0·779
(10) All over 45 yr								
8 areas	0·994	0·979**	0·030	−7·820**	5·082**	7·642**	−5·912**	3·532**
12 areas	0·894	0·827	0·119	−4·239**	1·703	2·622*	−0·055	0·957
(11) All females								
8 areas	0·993	0·975**	0·035	−8·06**	3·797**	5·664**	−5·344**	2·153
12 areas	0·935	0·879*	0·073	−5·902**	2·468*	2·982*	−0·633	1·077
(12) All males								
8 areas	0·995	0·982**	0·025	−4·762**	2·519*	5·472**	−4·581**	−1·094
12 areas	0·936	0·897*	0·074	−5·141**	3·418**	3·539**	−0·893	1·339
(13) All married								
8 areas	0·978	0·921**	0·108	−3·734**	1·720	3·512**	−3·511**	−1·112
12 areas	0·979	0·967**	0·025	−9·749**	6·097**	5·311**	−2·222*	−0·160
(14) All not married								
8 areas	0·998	0·993**	0·010	−15·971**	8·091**	11·735**	−9·207**	−6·106**
12 areas	0·902	0·841	0·111	−4·534**	1·891	2·496*	−0·135	1·308
(15) All persons								
8 areas	0·999	0·996**	0·005	−21·207**	10·467**	17·323**	−14·964**	−6·536**
12 areas	0·851	0·922**	0·057	−6·605**	3·201**	3·687**	−0·767	1·434

$cR = \sqrt{1-((1-R^2)^*(N-1/N-m))}$, where N = no. areas, and m = no. of variables, 6. $\delta cR = 1 - cR^2/\sqrt{N-m}$. *cR* and *t* significant at *0·05 level, at **0·01 level of statistical probability of error.

Table 7. *R, cR and ∂cR with 5 and 4 variables, and F test of differences in cRs of 5 v. 4 independent variables, 8 areas of Springfield and St Bernard's hospitals*

	R	*cR*	*∂cR*	*F* Test		*R*	*cR*	*∂cR*	*F* Test
Females married, under 45					**Males married under 45**				
5 Variables	0·997	0·989°°	0·015	*cR5–cR4*	5 Variables	0·998	0·993°°	0·010	*cR5–cR4*
– log % Im.	0·643	0·000	1·000	94·227°°	– log % Im.	0·858	0·620	0·355	86·550°°
– log % Un.	0·943	0·861°	0·149	22·851°°	– log % Un.	0·938	0·848°	0·162	38·320°°
– Ldn	0·926	0·817	0·192	29·986°°	– Ldn	0·773	0·247	0·542	133·087°°
– log % Aff.	0·934	0·838°	0·172	26·645°°	– log % Aff.	0·864	0·639	0·342	83·082°°
– log % 1 PH	0·993	0·984°°	0·019	1·112	– log % 1 PH	0·973	0·936°°	0·072	15·868°
Females married, over 45					**Males married, over 45**				
5 Variables	0·976	0·913°	0·117		5 Variables	0·986	0·950°°	0·069	
– log % Im.	0·666	0·000	0·577	10·958°	– log % Im.	0·793	0·366	0·500	16·481°
– log % Un.	0·913	0·782	0·224	2·921	– log % Un.	0·917	0·793	0·214	5·864
– Ldn	0·825	0·505	0·430	7·610	– Ldn	0·786	0·329	0·515	17·035°
– log % Aff.	0·941	0·856°	0·154	1·330	– log % Aff.	0·921	0·804	0·204	5·496
– log % 1 PH	0·960	0·904°	0·106	0·222	– log % 1 PH	0·950	0·879°	0·131	2·779
Females not married, under 45					**Males not married, under 45**				
5 Variables	0·997	0·989°°	0·015		5 Variables	0·988	0·957°°	0·059	
– log % Im.	0·728	0·000	0·577	94·227°°	– log % Im.	0·837	0·549	0·403	15·276°
– log % Un.	0·960	0·904°°	0·106	15·586°°	– log % Un.	0·973	0·936°°	0·072	1·002
– Ldn	0·847	0·584	0·381	61·442°°	– Ldn	0·787	0·334	0·513	19·985°
– log % Aff.	0·903	0·755	0·249	39·434°°	– log % Aff.	0·853	0·604	0·367	13·708°
– log % 1 PH	0·996	0·991°°	0·011	– 0·228	– log % 1 PH	0·985	0·965°°	0·040	– 0·361
Females not married, over 45					**Males not married, over 45**				
5 Variables	0·840	0·560	0·485		5 Variables	0·746	0·000	1·000	
– log % Im.	0·828	0·516	0·424	0·211	– log % Im.	0·746	0·000	1·000	0·000
– log % Un.	0·806	0·427	0·472	0·584	– log % Un.	0·737	0·000	1·000	0·000
– Ldn	0·811	0·449	0·461	0·500	– Ldn	0·746	0·000	1·000	0·000
– log % Aff.	0·739	0·000	1·000	1·393	– log % Aff.	0·674	0·000	1·000	0·000
– log % 1 PH	0·733	0·000	1·000	1·393	– log % 1 PH	0·743	0·000	1·000	0·000

$cR = \sqrt{-((1-R^2)^*(N-1/N-m))}$, where N = no. samples (12 areas), and m = no. of variables.
$\partial cR = 1-cR^2/\sqrt{N-m}$. Attenuation to R not to reduce a cR beyond 0.
cR, All variables, significant at °0·05 level = 0·860; °°0·01 level = 0·918, all variables but one, °0·05 level = 0·838; °°0·01 level = 0·904.
F differences in 5 v. 4 variable $cRs = (cR1^2-cR2^2)^*(N-m1-1)/(1-cR1^2)^*(m1-m2)$, where N = 8 areas, m = no. of independent variables. *F* significant at °0·05 level = 7·71; °°0·01 level = 21·20.

years old; etc.) the beta weight *t* ratios are significant for: 1-person households (%), in 1 of the 16 numbered groups: for affluent (%), in 6 of the 16 groups; for both Ldn and unemployed (%), in 11 of the 16 groups; and for immigrants (%), in 13 of the 16 groups. In general the beta weight *t* ratios from the 12 sample areas of all three hospitals are somewhat smaller than those calculated from the data for the eight sample areas of the Springfield and St Bernard's hospitals.

Exclusion of individual variables

Multiple correlations were also calculated for the eight population sub-groups in the eight areas of Springfield and St Bernard's when the data for each of the socioeconomic and aircraft noise variables was removed. The results are shown in Table 7. The magnitude of the reduction in the *cR* correlation that ensues when a given independent variable is removed is a measure of the relative importance of the omitted variable in the prediction of hospital admission rate. The *F* test indicated that a statistically significant reduction in *cR* occurred in 6 of the 8 cases for immigrants (%), 3 of 8 for unemployment (%), 5 of 8 for Ldn, 4 of 8 for affluent (%), and 1 of 8 for one-person households (%). These findings are, as is to be expected, fairly consistent with the significant beta weights found in Table 6. However, according to the *F* test of Table 7, unemployment (%) does not appear to be as important a variable for the groups of not-married females under 45 and married males over 45 years of age as it is according to the beta weights for that variable when all 5 of the independent variables are involved.

Table 8. *Admission rate for all persons, logs of socioeconomic percentage scores in areas having equal levels of aircraft noise. Also, correlations (r) between AR v. variables and Ldn v. variables*

					Mean			
Admission rate/1000 for all persons								
Springfield	10·541	9·029	6·372	5·682	7·906			
St Bernard's	7·517	8·412	10·729	10·527	9·296			
Holloway	8·015	11·695	15·809	16·912	13·108			
Mean AR	8·691	9·712	10·970	11·040	10·103			
Aircraft noise, Ldn					*r*, AR, all persons	*čr*		
Springfield	58	65	70	77	−0·965**	0·040		
St Bernard's	58	65	70	77	0·903*	0·107		
Holloway	58	65	70	77	0·968**	0·036		
Mean Ldn	58	65	70	77	0·943**	0·064		
Log immigrants (%)							*r*, Ldn v. variable	*čr*
Springfield	1·228	1·345	1·118	1·525	−0·303	0·524	0·538	0·410
St Bernard's	0·888	1·259	1·126	0·875	−0·003	0·577	−0·101	0·571
Holloway	0·868	0·922	0·738	0·714	−0·826*	0·183	−0·795	0·212
log mean immigrants (%)	1·028	1·210	1·027	1·122	−0·230	0·547	0·206	0·553
Log unemployed (%)								
Springfield	0·604	0·589	0·356	0·330	0·971**	0·033	−0·901*	0·109
St Bernard's	0·471	0·839	0·809	0·391	0·055	0·576	−0·151	0·564
log mean unemployed (%)	0·543	0·732	0·639	0·362	0·538	0·378	−0·513	0·425
Log affluent (%)								
Springfield	1·384	1·424	1·533	1·535	−0·974**	0·030	0·882*	0·128
St Bernard's	1·542	1·530	1·498	1·569	−0·455	0·458	−0·075	0·574
Holloway	1·633	1·602	1·517	1·529	−0·970**	0·034	−0·889*	0·121
log mean affluent (%)	1·531	1·525	1·524	1·538	0·131	0·567	0·412	0·479
Log 1-person households (%)								
Springfield	0·965	0·989	0·798	0·729	0·933*	0·705	−0·890*	0·120
St Bernard's	0·645	0·631	0·705	0·665	0·800	0·208	0·477	0·446
Holloway	0·591	0·680	0·716	0·811	0·964*	0·063	0·995**	0·006
log mean 1-person households (%)	0·767	0·798	0·742	0·739	−0·651	0·333	−0·616	0·358

r, significant at 0·05 level = 0·805; **0·01 level = 0·959. $čr = 1 - r^2/\sqrt{N-1}$.

Analysis of the data by hospital catchment basin

As noted earlier, in the Jenkins *et al.* study each of the defined four levels of aircraft noise exposure was represented in each of three hospital catchment basins. This provides the opportunity to compare (as did Jenkins *et al.*) hospital admission rates with the independent variables for three separate sets of data. Table 8 gives, for all persons, the AR in each Ldn area per hospital plus their means over the three hospitals. Table 8 also gives the Ldn levels of aircraft noise and the log percentage scores for the socioeconomic variables in each sample area, and the log of their means over the three hospitals. Also shown are zero-order product-moment coefficients of correlation (*r*) between admission rate and Ldn and each of the socioeconomic variables, and between Ldn and each of the socioeconomic variables. The correlations indicate a significant positive relation between aircraft noise exposure level and admission rates for St Bernard's, Holloway and the average for the three hospitals, but a statistically significant negative correlation between admission rate and Ldn for the Springfield samples. For each of the three hospitals, the zero-order correlations of AR with immigrants (%) and affluence (%) are uniformly negative and, with one-person households (%), positive.

The percentage of immigrants, see Table 9, differs considerably among the three hospitals, ranging over the four Ldn areas, from 13·12 to 33·5% for Springfield, 7·5 to 18·16% for St Bernard's, and 5·18 to 8·35% for Holloway. Note also the generally larger numbers of

Table 9. *Percentage of immigrants by areas of equal Ldn levels of aircraft noise*

	58 Ldn	65 Ldn	70 Ldn	77 Ldn	Mean	S.D.
Springfield	16·900	22·140	13·120	33·500	21·415	8·865
St Bernard's	7·720	18·160	13·370	7·500	11·688	5·099
Holloway	7·380	8·350	5·470	5·180	6·595	1·524
Mean, St Bernard's and Holloway	7·550	13·255	9·420	6·340	9·141	3·021
	Diff. mean	δ Diff.	*t*			
Springfield *v.* St Bernard's	9·227	5·904	1·640			
Springfield *v.* Holloway	15·822	5·193	3·046			
Springfield *v.* Mean St Bernard's and Holloway	12·274	5·607	2·207			
St Bernard's *v.* Holloway	5·093	3·071	1·658			

t Significant at 0·10 level = 2·353; 0·05 level = 3·182.

immigrants in the Springfield catchment basin over all areas than for the other hospitals (21·415% in Springfield areas *v.* 11·688% and 6·595% in the St Bernard's and Holloway areas respectively). As indicated on Table 9, the mean of immigrants (%) is greater in the Springfield catchment areas than the mean of the Holloway areas and the mean of the combined means of the St Bernard's and Holloway areas at near the 0·10 level of statistical significance.

DISCUSSION

Data problems

As mentioned previously, there may be reason to question the reliability of the data for not-married males over 45 years of age. As seen in Table 3, there is about a quarter of the expected number (32 422 *v.* 124 125) of not-married males over 45 years of age according to the data for the other sex, age and marital status groups of the at-risk population. This relatively small sample size for not-married males over 45 indicates that some unusual census process affecting that group had occurred. For this reason, the validity of the results found for that group must be considered as being of questionable validity.

A second experimental problem was the lack of data for unemployed (%) for the four areas of the Holloway catchment basin. Two methods were used, in pilot analyses, to estimate percentage unemployment for the Holloway Ldn areas: (1) the overall mean percentage unemployed, 3·884%, for all the other areas of the two other hospitals was assigned to each of the four Ldn areas of Holloway; and (2) the average, as is shown in Table 2, for each of the respective Ldn areas for the other two hospitals was assigned to the respective Ldn area of Holloway. The multiple correlations and beta weights found with these two procedures did not differ greatly. The validity of any estimates of unemployment rates for the Holloway area is, of course, a matter of conjecture, and for this reason an analysis was performed for those eight areas (Springfield and St Bernard's) for which complete socioeconomic data were available.

The valences of the *t* ratios, see Table 6, of the eight-area analysis are consistent with those of the 12-area analysis with respect to immigrant status, unemployment, affluence and aircraft noise exposure level. However, living alone, which was weakly positively associated with admissions in 10 of the 15 population groupings in the 12-area analysis, was negatively associated, sometimes with statistical significance, with admissions in 11 of the 15 population groupings in the eight-area analysis. Apparently, using the unemployment data for eight of the samples (Springfield and St Bernard's) to estimate the unemployed (%) for the other four samples (Holloway) forced the unemployment (%) beta weights to somewhat artificially high values in the 12-sample analysis. It is hypothesized that this enhanced correlation of unemployment (%) with admission rate captured, because of complex intercorrelations among the variables, some of the weight that emerged in the eight-sample analysis between admission rate and one-person households (%).

Unfortunately, as pointed out by Jenkins *et al.*, the hospital records did not provide information on the various socioeconomic variables for their individual patients. Accordingly, the overall-population socioeconomic survey data had to be applied equally to each of the

sub-group populations within each of the specified residential areas. This would not necessarily impose any particular bias on the findings, but it does prevent any precise determination of possible differences among the sub-groups of the population with respect to these variables.

Possible causal factors

Identification of the psychological–physiological stresses associated with the various independent variables that could possibly contribute to mental disease is beyond the scope of this paper. It might be noted however that, as mentioned earlier, high levels of annoyance occur from the effects of exposure to intense aircraft noise in a community (Kryter, 1985). Jenkins *et al.* cite several studies (Faris & Dunham, 1939; Levi & Rowitz, 1970, 1971; Mezey & Evans, 1970; Levy & Herzog, 1974) that reported higher rates of mental disorders in residential areas characterized by high proportions of single-person households, unemployment, immigrants, low income, high mobility, poor housing, and the like. Cochrane (1977) found that persons who were citizens of Great Britain and also migrated to the London area were, as a group, generally disadvantaged and highly susceptible to mental disorders.

Ambiguities in the data

The percentages of people in the general population who are unemployed, lack affluence, live alone, and are immigrants are somewhat ambiguously related to mental health and rates of admission to psychiatric hospitals. This ambiguity arises, of course, from the fact that while mental illness is the cause of psychiatric hospitalization, it may also, as discussed above, be a factor in causing some not-hospitalized people to migrate within their own country, live alone, lack affluence and be unemployed. Also, mental illness may be a factor, as will be discussed later, that inhibits emigration to a foreign country because of the effort and resources required to effect such a move, as well as possible barriers to the granting, to persons with such handicaps, admission to, and citizenship in, a foreign nation. On the other hand, possible linkages between mental illness and level of aircraft noise seem less ambiguous in that mental illness ostensibly does not determine the level of aircraft noise in the areas in which a person resides.

Aircraft noise is also unique among the independent variables in that it is the only one for which the amount is known to be grossly the same in a given residential area for each of the various segments of the population (female, male, married, etc.). This being the case, any differences among the sub-groups of people in the correlation statistics between hospitalization rates and aircraft noise exposure can presumably, to some extent, be interpreted as signifying differences among the groups in their possible susceptibilities to disease-causing stress associated with the noise. However, there is also the probability that because of differences in the transmission of aircraft noise into different houses, and differences between subgroups in house occupancy patterns (differences among sub-groups in average number of hours per day spent at home, for example), some differences may exist in the effective levels of aircraft noise exposures experienced by different sub-groups of the population living within areas measured as being equal in aircraft noise.

Immigrant status and hospital admission rate

The finding of strong negative correlations and beta weight relations between immigrant status and hospital admission rates deserves special comment. For one thing, it is contrary to the findings of some previous research studies, and to intuitive expectations, that immigrants are faced with the stresses of adapting to a new social and physical environment. However, Cochrane (1977) found in an analysis of admissions to mental hospitals in England and Wales that the rate of admissions per 1000 at risk averaged 8·85 for people from the United Kingdom (England, Wales, Scotland and Northern Ireland) but averaged only 4·03 for immigrants (persons from the West Indies, India, Pakistan, Germany, Italy, Poland and the USA). Cochrane concluded that the most likely explanation for this general difference was that only the more stable members of the foreign societies would overcome the obstacles involved in immigration, particularly from far away places.

This phenomenon, together with the way in which immigrants were distributed among the different residential areas in the Springfield catchment basin, perhaps serve to obscure a

positive relation for that hospital between admission rate and aircraft noise exposure level. Note in Table 9 that 16·9% of the people in the Springfield area of Ldn 58 and 33·5% in the Ldn 77 area are immigrants, nearly a 100% increase in this regard over the Ldn 58 area. At the same time (see Table 8) there was a 46% decrease for 'all persons' in admission rates from the Ldn 58 *v.* Ldn 77 areas for the Springfield Hospital. The impact of the immigrant variable is so large for the Springfield catchment basin, especially in the Ldn 77 area, that one would not expect to detect in the data any possible opposing increase in AR associated with the aircraft noise for the Springfield areas. This impact underlies the statistically significant and negative correlations of −0·965 for all persons, shown in Table 8, between AR and aircraft noise level for the Springfield Hospital. As shown in Table 9, the percentage of immigrants in the areas served by St Bernard's and Holloway hospitals is notably less, and immigrants are apparently distributed among the different Ldn areas somewhat more uniformly than for the Springfield Hospital areas.

The regression lines in Fig. 1 illustrate the results and interpretive arguments given above. Fig. 1(*a*) shows plots of the data and zero-order correlation coefficients of AR with Ldn for the Springfield ($r = -0·965$), St Bernard's ($r = 0·903$) and Holloway ($r = 0·968$) hospitals; Fig. 1(*b*) shows the generally negative correlation of AR with log% immigrants (−0·291, −0·018 and −0·812 for the three hospitals); Fig. 1(*c*) shows for the Springfield Hospital a positive correlation (0·538) of log% immigrants with Ldn and that the magnitude of the general increase in log% immigrants, as a function of Ldn, is somewhat greater in the areas serviced by Springfield as compared to those serviced by St Bernard's and Holloway.

Hospital admission rate as function of exposure to aircraft noise Ldn

Fig. 2(*a*) gives the regression between hospital-standardized, averaged admission rates for the three hospitals and aircraft noise exposure level for 'all persons'. It is seen that there is an increase for the regression line of 30% in AR between Ldn 58 and Ldn 77 (8·8–11·4 per 1000 at risk). The regression in Fig. 2(*a*) must, of course, be considered as an approximation. It is probably a conservative approximation in view of the negative correlation of admission rate with immigrants (%) in conjunction with the relatively larger number of immigrants in the Ldn 77 as compared to the Ldn 58 areas of Springfield (19·9% *v.* 33·5%, a 98% increase). By the same token, however, the Holloway data may exaggerate somewhat the apparent admission rate in the higher noise area, because for that hospital there are relatively fewer immigrants in the Ldn 77 than the Ldn 58 areas (7·38% *v.* 5·18%, a 30% decrease).

Table 8 shows that for the St Bernard's data the correlations between Ldn and the socioeconomic variables, unlike those for the other hospitals, are all relatively small and statistically insignificant (*r*s of −0·101, −0·151, −0·075, −0·477 and −0·723 with, respectively, percentages of immigrants, unemployed, affluent, one-person households and males moved). Therefore, the regression of admission rates with the aircraft noise for that hospital should be relatively independent of these other variables, i.e. they seem to be fairly randomly distributed among the noise areas. The regression line of AR for all persons except not-married males over 45 years with Ldn, Fig. 2(*b*), shows a 47% increase in admission rate for St Bernard's from Ldn 58 to Ldn 77 (AR 7·5–11·0). Perhaps it would be realistic to estimate from the three-hospital average and the data for St Bernard's that a 40% increase in hospital admissions is associated with an increase in Ldn from 58 to 77, other factors being equal. This is in reasonable agreement with the finding of Meecham & Smith of a 29% increase in mental hospital admissions from an area near Los Angeles exposed to aircraft noise of about Ldn 70–75 in comparison to admissions from a control area with a low level of aircraft noise.

As mentioned earlier, Jenkins *et al.* report that on average some 18% of the admissions to the three hospitals were screened from that database because of insufficient data regarding location of the place of residence of the patient. Assuming that these exclusions were randomly associated with the different Ldn areas and population group categories (as must be done to allow for any meaningful analysis of their data), it would be appropriate to adjust the admission rates of the screened populations by 18% in order to estimate actual hospital admission, or

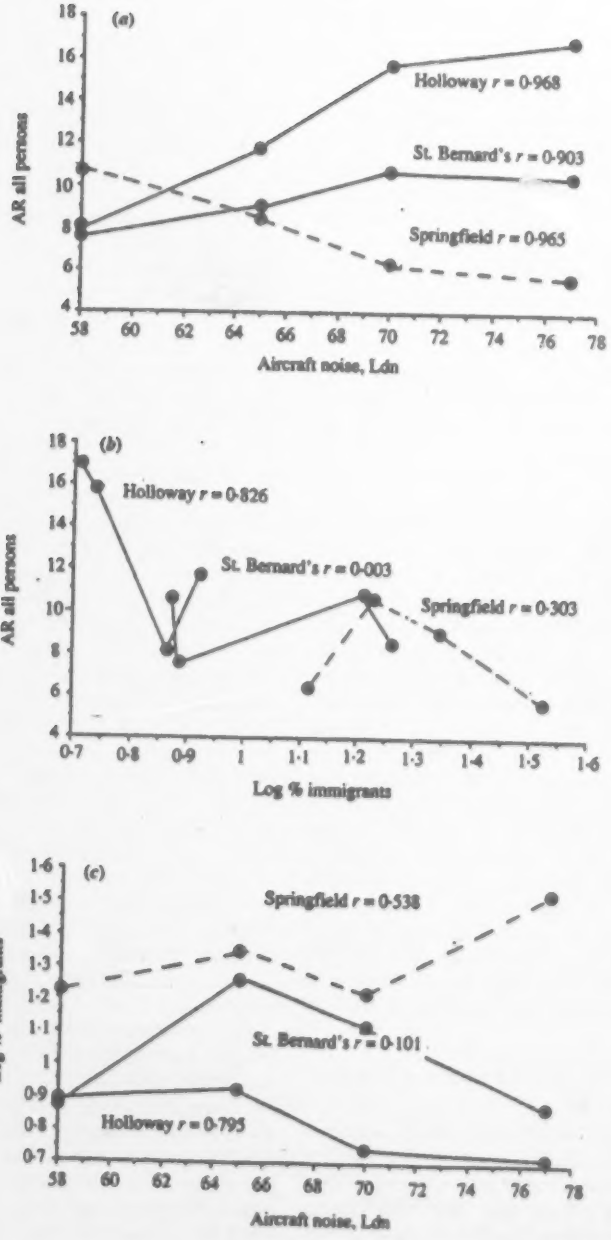

FIG. 1. Showing for 'all persons' data plots and coefficients of correlation between : (*a*) AR and aircraft noise; (*b*) AR and log immigrants (%); and (*c*) % log immigrants and aircraft noise.

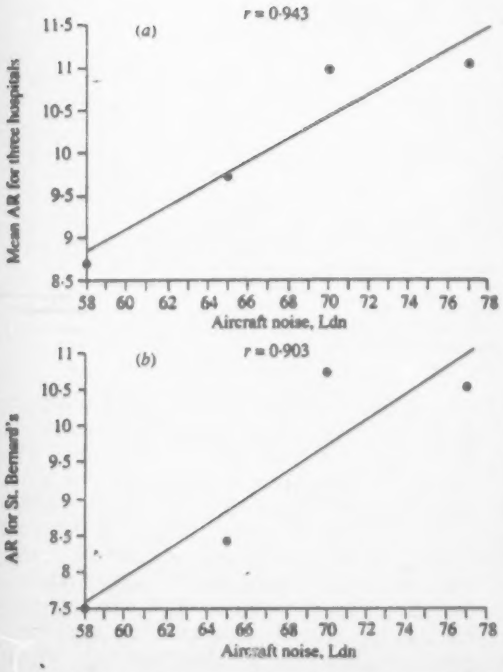

FIG. 2. Regression line and coefficient of correlation between aircraft noise exposure level, Ldn, and average of admission rates for all three hospitals (*a*), and admission rate for areas of St Bernard's Hospital (*b*).

approximately 9·4 actual (estimated approximately 8·8 plus 18%) per 1000 at risk in Ldn 58, and 13·3 actual (9·4 plus 40%) per 1000 at risk in Ldn 77.

Comparison of methodologies of Jenkins *et al.* and present analyses

To assess interactive relations between aircraft noise and some of the socioeconomic variables on admission rate, the patients at St Bernard's hospital were stratified by Jenkins *et al.* according to their exposure to aircraft noise, and two of the socioeconomic variables as follows: (1) >30% in professional/managerial occupations, and >15% one-person households; (2) >30% in professional/managerial occupations, and <15% one-person households; (3) <30% in professional/managerial occupations, and >15% one-person households; and (4) <30% in professional/managerial occupations, and <15% one-person households.

With the numbers at risk in the St Bernard's catchment basin for these four socioeconomic groupings of people in hand, Jenkins *et al.* found the admission rates (age, sex and marital status standardized) for each group in the four aircraft noise areas. The data for the two highest noise-level areas were combined because of the relatively small size of the two-variable-stratified-populations in the highest (Ldn 77) noise area. When plotted against aircraft noise level, the resulting admission-rate data for each of the groups, stratified by both occupational class and one-person households, showed a relatively linear increase in admission rate with increased noise level, in agreement with the general results of the present analysis. Because the stratification of patients according to more than one socioeconomic variable was so cumbersome, Jenkins *et al.* applied such analyses only to the above-described analysis of the two variables of one-person households and professional/managerial occupations for the St Bernard's catchment basin areas.

Jenkins *et al.* also examined the hospital admission data in relation to the aircraft noise and socioeconomic data by graphing the admission data for each hospital separately against aircraft noise exposure level. Jenkins *et al.* did not find consistent trends between admission rates and level of aircraft exposure when the variables of immigrants (%), one-person households (%), or subjects in professional/managerial occupations (%) were individually used as a parameter. Primarily for this reason, the investigators concluded that if any effect of aircraft noise on hospital admissions exists, it is a subtle one that interacts with causal factors beyond those examined in their study.

Jenkins *et al.* chose not to use correlation procedures to avoid, among other things, making the assumption of regression linearities between the dependent and independent variables. Such an assumption is, of course, unjustified when linear-regression formulae are used, as in the present analyses, and when low or modest coefficients of correlation emerge. However, the number of high multiple-factor correlation coefficients found in the present analyses would seem to demonstrate that considerable linearity exists with the data involved.

The results of the present multiple-correlation analysis with respect to the aircraft noise variable

Table 10. *Beta weight t-ratios for aircraft noise in multiple correlation predictions of admission rates to psychiatric hospitals for population groups in the 8 areas of the Springfield and St Bernard's hospitals*

	Married		Not married	
	Females	Males	Females	Males
Under 45 years	7·060**	14·997**	9·980**	5·559**
Over 45 years	3·407*	5·044**	0·569	(−0·028)
	All under 45	All over 45	All females	All males
	51·814**	7·642**	5·664**	5·472**
	All married	All not married	All persons	
	3·512**	11·755**	17·323**	

Beta weight statistically significant at **0·01(3·499) level; *0·05(2·365) level.
( ) Numbers-at-risk census data for this group questionable (see text and Table 3).

that are free from possible bias due to estimates of unemployment data (the eight areas of Springfield and St Bernard's hospitals) are summarized in Table 10. Contrary to the conclusion reached by Jenkins *et al.* these results show that generally exposure to aircraft noise is statistically significantly and positively related to rate of admission to psychiatric hospitals. These findings are in substantial agreement with those obtained for the multiple-correlation analysis of all 12 residential areas of the three hospitals (see Table 6).

Possible fallacies

A question faced in any epidemiological survey is whether the correlations found between the predicted and predictor variables are possibly spurious. Of particular concern in this study would be whether the positive correlations obtained between aircraft noise exposure and hospital admission rate were the result of the excessive presence, by chance, in the areas of higher noise levels of: (*a*) persons inherently above average in susceptibility to mental disorders, and/or (*b*) persons with such disorders because of socioeconomic or environmental variables that are not highly correlated with the studied socioeconomic variables but are spuriously correlated with the aircraft noise variable.

However, it is to be noted that (*a*) except for not-married females over 45 years of age, and possibly for the same category of males, high multiple correlations were found, often accounting for over 90% of the variance in hospital admission rates for the different sub-groups of the population (albeit this consistency could be somewhat driven by the lack of socioeconomic data specific to each of the sub-groups); (*b*) essentially the same results were obtained from the analyses of the data for the eight as for the 12 residential areas; and (*c*) unlike for the sub-groups, the socioeconomic data are fully appropriate, within the constraints of the database, for 'all persons', and, for the eight-area analysis, are also free from the use of estimated unemployment data – for the 'all persons', 'eight areas' data, the beta weight for aircraft noise is significant beyond the 0·01 level of chance probability of error, and 99% of the variance in hospital admissions is accounted for by the multiple-correlation coefficient. It seems unlikely that such findings as these could occur because of chance distributions to the areas exposed to levels of higher aircraft noise of people with higher than average inherent degrees of susceptibility to health disorders, or the presence of factors affecting susceptibility to health disorders that were correlated with the airport noise and not correlated with the available socioeconomic data.

Taken at face value, these findings support the theory that socioeconomic and aircraft noise exposure variables are individually associated with psychological stresses, and that to some degree this stress can be contributory to health disorders requiring admission to a psychiatric hospital.

SUMMARY

(1) The admission rate to psychiatric hospitals

is greater for those groups of people who are over rather than under 45 years of age, female rather than male, and not-married rather than married.

(2) In the context of the independent variables as defined and measured: (*a*) the percentage of males changing residence within 5 years is not significantly associated with psychiatric hospital admission rates; (*b*) for most segments of the population, unemployment and exposure to aircraft noise are positively, and affluence and living in a one-person household are negatively associated with admission rate; (*c*) for most segments of the population, immigration status was negatively associated with hospital admission rate. It is surmised that selection processes served to screen out many potential immigrants susceptible to mental illness.

(3) A positive relation between hospital admission rates and exposure level to aircraft noise was found for two hospitals individually, St Bernard's and Holloway, but a negative relationship in this regard is present for Springfield Hospital. The present analysis suggests that the unusually large numbers of immigrants and the way in which they were distributed among the different residential areas in the catchment basin of the Springfield Hospital served, in conjunction with the significant negative relationship between numbers of immigrants in an area and hospitalization rate, to mask a positive relationship between admission rate for the Springfield Hospital as a function of the exposure level of aircraft noise.

(4) Aircraft noise exposure level above an Ldn of 58 is significantly predictive of an increase in psychiatric hospital admissions. It is estimated that for the overall population studied there was an increase of about 40% in psychiatric hospital admission rates associated with an increase in exposure level of aircraft noise from about Ldn 58 to Ldn 77.

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EXHIBIT C

THE EFFECTS OF NOISE ON MAN

Second Edition

KARL D. KRYTER
SRI International
Menlo Park, California

1985

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Preface

This is the third manuscript I have prepared under the title of "The Effects of Noise on Man." The first was a monograph for the Office of Naval Research, and published by the American Speech and Hearing Association in 1950. The second was sponsored by the Office of Naval Research, the Surgeon General of the Army, and the National Aeronautics and Space Administration (NASA) and published by Academic Press in 1970. The present book, in a somewhat briefer form, was originally prepared for NASA with support from the U.S. Department of Transportation and the U.S. Environmental Protection Agency (NASA Reference Publication 1115, 1984).

These manuscripts are critical reviews and interpretations of original source research literature (primarily English language) on the measurement of the effects of noise on people and animals. In the present book the results of these analyses are integrated into state-of-the-art theory and procedures for predicting various effects of noise on the health and well-being of people. Some of the social, legal, and governmental regulatory problems created because of these effects are also discussed.

The first four chapters are concerned with some definitions of terms and research on the fundamentals of noise, hearing, and auditory perception. The next eight chapters are organized around research on noise effects on more complex human behavior and the application of this research to the regulation of noise in work and living areas. The last chapter is a summary of major findings of the book.

I gratefully acknowledge the authors and publishers of journals and books for permission to reproduce their figures. I owe many thanks to Joyce Garbutt for her skills and patience during innumerable typings of the manuscript, to James R. Young for his help with respect to mathematical formulas, and especially to Kelli Willshire and other members of the staff of NASA Langley Research Center for their valuable editorial suggestions and comments.

Needless to say, I am deeply grateful to the organizations cited above for their support over the years. I can only hope this book provides some justification for that support.

EXHIBIT D

Nonauditory-System Response to Noise and Effects on Health

Grandjean *et al.* (ref. 214) found a progressive increase in the reported use of tranquilizers and sleeping pills as the exposure level to aircraft noise increased in different neighborhoods. (See table 10.14.) The data collected by Grandjean *et al.* that are shown in the table and other data of theirs discussed later indicate that the increased use of these sedatives in higher levels of exposure to aircraft noise was due to the interference effects of the noise with sleep and speech communications.

The most substantial research data showing a probably causal relation between exposure to aircraft noise in residential neighborhoods and adverse health effects are those obtained by Knipschild (refs. 215 to 217) and Knipschild and Oudshoorn (ref. 218). In one of these studies (ref. 215) about 6000 people were given medical examinations (heart X rays, ECG, blood pressure, height, and weight) and World Health Organization standard questionnaires for angina pectoris, for medical treatment and drugs for heart trouble, and for smoking habits. The 6000 people represented about 42 percent of the people who were invited to participate in the cardiovascular screening study from eight villages near the Amsterdam Schiphol Airport. (See fig. 10.58.) All the subjects were screened by the same staff, equipment, and methods.

The main results of this community cardiovascular screening survey are shown in table 10.15 and figure 10.59. Table 10.15 shows that the incidence of medical treatment of heart disease, use of cardiovascular drugs, pathological heart shape, and hypertension were all significantly greater (statistically) in people from the higher aircraft noise areas than in the lower aircraft noise areas. The differences were in the same direction with respect to angina pectoris and pathological ECG but were not statistically significant. The most significant statistical

TABLE 10.14

Effects of Aircraft Noise on Behavioral Reactions

[Hours from 0600 to 1800; data from ref. 214]

Behavioral reaction	Percent of people interviewed[a] responding affirmatively for L_{dn} of—						
	<47 (223)	47 (485)	55 (460)	63 (1066)	71 (1065)	77 (540)	87 (73)
Use ear protection	2	0.5	2	4	4	7	22
Use tranquilizers + sleeping pills	1	0	2	5	5	10	20
Close windows	2	.4	13	20	28	46	55
Remain less outdoors	1	0	4	4	11	22	34
Wish to move away	.4	0	2	9	17	35	33

[a] *Number of people interviewed given in parentheses.*

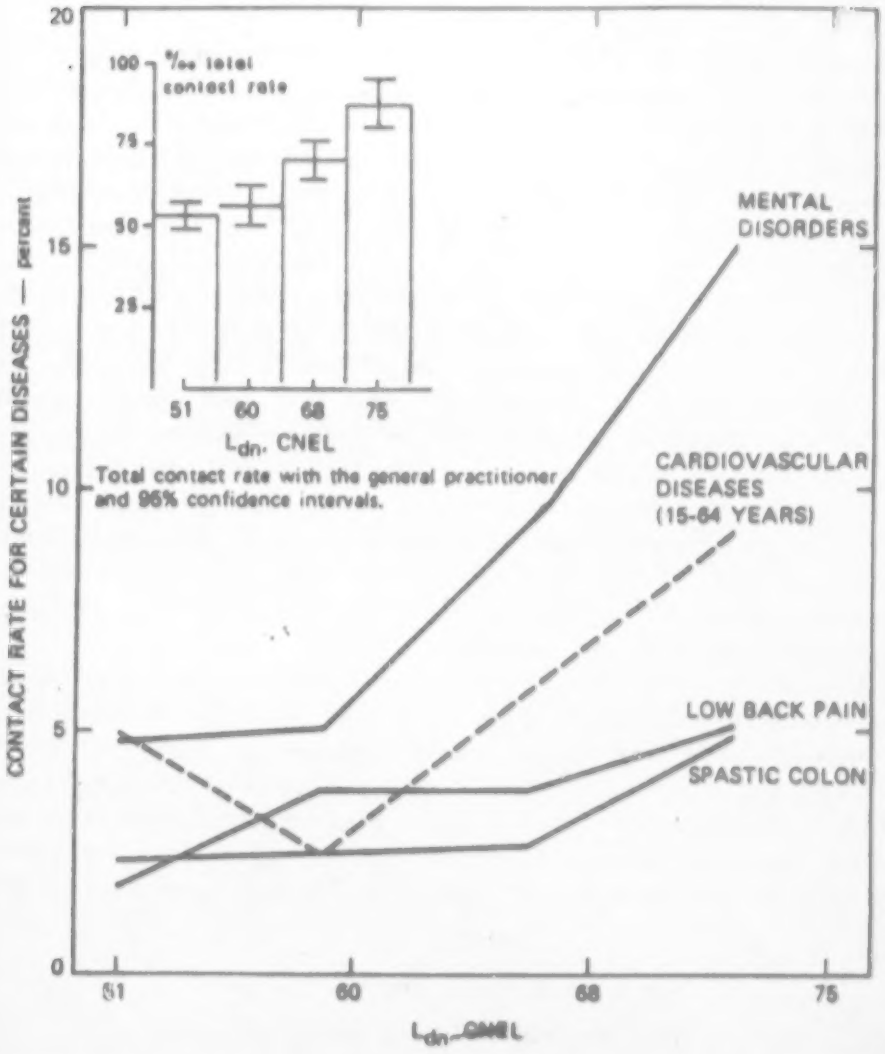

FIGURE 10.60. Physician contact rate for certain diseases in areas with more and less aircraft noise. (Data from ref. 216.)

For the purpose of further analysis, the four disorders identified in table 10.16 as psychological problems, psychosomatic problems, cardiovascular disease, and hypertension are grouped together as representing the disorders most likely due to stress from, among other things, exposure to aircraft noise. The remaining physician contacts are, for the present discussion, assumed to be more likely due to non-stress-related causes.

Table 10.17 shows that as the noise level increases (*e.g.*, $L_{dn} < 60$ vs $L_{dn} = 60$ to 65), there is an increase in the percent of physician contacts for the non-

TABLE 10.16

Main Results of General Practice Survey

[Data from ref. 217]

Reason for physician contact	Population[a], percent, contacting physician for L_{dn}, dBA, of—			χ^2 test for linear trend
	<60 (14625)	60–65 (4050)	>65 (3650)	
Psychological problems	0.65	1.13	1.75	<0.001
Psychosomatic problems[b]	1.12	1.54	1.69	.001
Cardiovascular disease	.46	.60	.82	.004
Hypertension	.25	.31	.43	.03
Total, stress effects	2.48	3.58	4.69	
Total, contacts	5.71	7.97	9.34	<0.001

[a] *Population at risk given in parentheses.*

[b] *Consist of low back pain, spastic colon, stomach complaints, allergic diseases, tinnitus, dizziness, and headache.*

TABLE 10.17

Percentages and Percent Increases of Physician Contact for Stress- and Non-Stress-Related Health Disorders

[See table 10.16 for basic data]

Description of parameter	Physician contacts, percent, for L_{dn}, dBA, of—			Increase in contacts, percent, for L_{dn}, dBA, comparison of—		
	<60	60–65	>65	<60 vs 60–65	60–65 vs >65	<60 vs >65
Sum of 4 stress[a] categories of health disorders	2.48	3.58	4.69	44	31	89
Total contacts, all disorders, minus sum of 4 stress categories	3.23	4.39	4.65	36	6	44

[a] *Stress categories are psychological problems, psychosomatic problems, cardiovascular disease, and hypertension.*

stress-related health disorders of 36, 6, and 44 percent. Accordingly, there is some indication that the people living in $L_{dn} > 60$ suffer from more health disorders in general than do people in $L_{dn} < 60$.

Table 10.17 also shows that there are greater increases in stress-related disorders than in non-stress-related disorders as noise levels increase (44, 31, and 89 percent compared with 36, 6 and 44 percent). This greater increase in stress-related health disorders than in non-stress-related disorders suggests that increasing the level of aircraft noise exposures is at least partially responsible for increases in stress-related disorders.

It is also possible that stress-related disorders increase with noise-exposure level at a greater rate than other types of health disorders because of a stronger correlation between socioeconomic status and stress-related disorders than with other types of health. On the other hand, it is also possible that some of the non-stress-related health disorders were also related to aircraft noise exposure and that the socioeconomic status differences noted by Knipschild were not large enough to account for differences in physician contacts.

Longitudinal study

Supportive evidence that aircraft noise was in fact a causal factor in the stress-related health disorders found in the community cardiovascular survey and the physician contact study was obtained by Knipschild and Oudshoorn (ref. 218). In this study, records of the purchase of certain drugs for the period of 1967 to 1974 were obtained from pharmacists in village areas C and E. (See fig. 10.58(b).) Area C had essentially no exposure to aircraft noise during this period whereas area E had essentially no aircraft noise until 1969, after which time, because of the opening of a new runway at Schiphol Airport, the noise was of the order of $L_{dn} > 64$. The authors state that there were essentially no changes in age distribution or socioeconomic status within each of the areas during the 1967 to 1974 period.

Figure 10.61 shows the number of certain drugs obtained per adult per year in the two areas. Clearly, the use of most of the drugs shows a steady increase after 1967 in area E (the aircraft-noise area) and no systematic change in area C (the no-aircraft-noise area). An exception appears to be for sedatives, which showed a decrease in area E after 1972 from a previously increasing trend in their use. The authors note that in 1973 nighttime aircraft operations were shifted to the daytime because of a curfew placed on nighttime aircraft operations. This possibly reduced the need for such sedatives to induce sleep during the night.

The trend curves in figure 10.61 seem to show a possible causal relation between exposure to aircraft noise and stress-related health conditions, particularly hypertension requiring medication. This relation cannot be readily attributed to any socioeconomic or other such factors in that the health disorders requiring certain medications steadily increased in a population following the onset and continuation of exposure to aircraft noise, whereas in a nearby control popula-

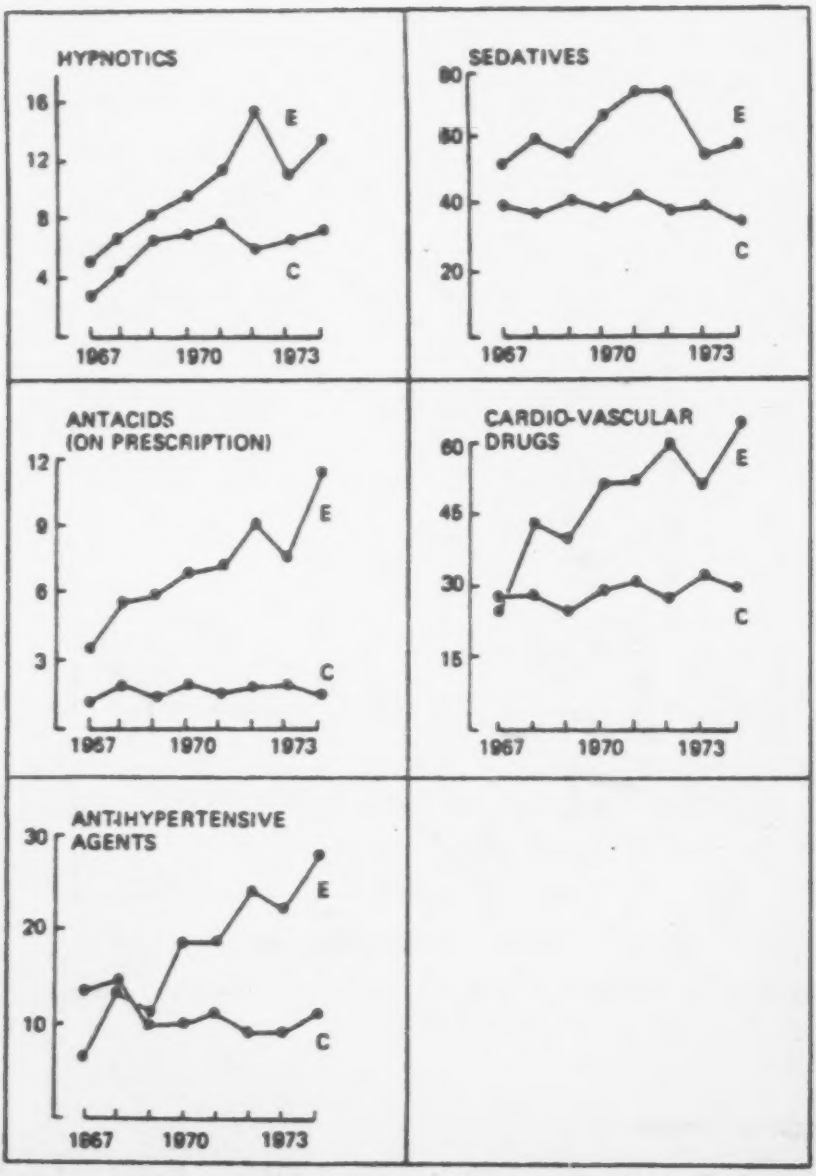

FIGURE 10.61. Number of certain drugs per adult per year. Area C—$L_{dn} \leq 51$: area E—$L_{dn} \leq 51$ (1967–1969) and $L_{dn} \geq 64$ (1969–1974). (From ref. 218.)

tion not exposed to aircraft noise, studies over the same period showed no such increase.

It might be suggested that healthier (*i.e.*, wealthier) people moved from the higher aircraft noise area over time and were replaced by generally less healthy people. Alternatively, it would seem more likely that there would be a trend for those most bothered by the noise to move to quieter areas and bias the results in

EXHIBIT G

Nonauditory-System Response to Noise and Effects on Health

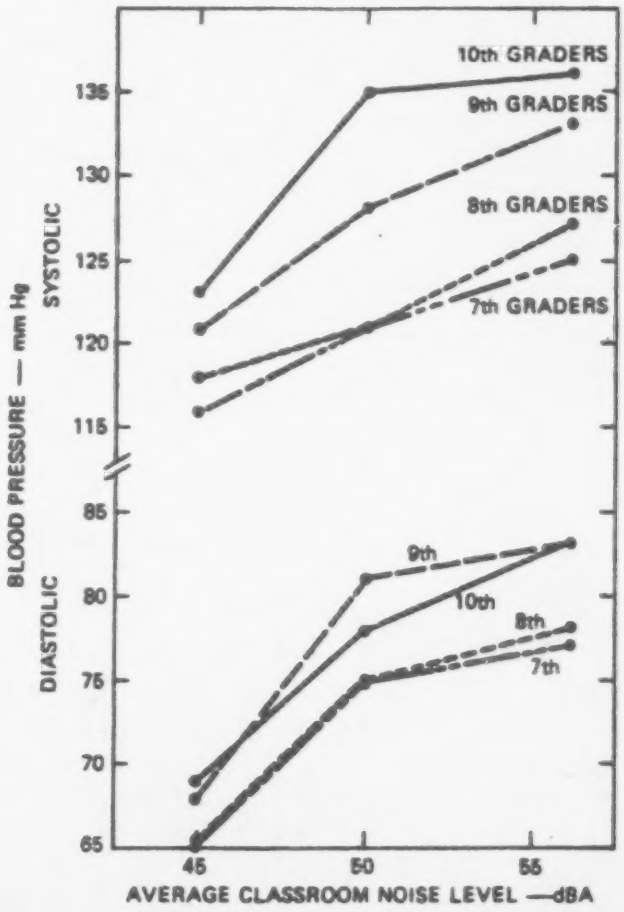

FIGURE 10.62. Blood pressure of students as a function of noise level of intruding street traffic noise. (Data from ref. 227.)

Health in fetuses

Ando and Hattori (ref. 231) and Knipschild *et al.* (ref. 232) found that infants born to mothers living in areas exposed to intense aircraft noise had lower average weights at birth than did infants born to mothers living in quiet neighborhoods. Ando and Hattori found that as the level of the aircraft noise increased the incidence of babies with low birth weights increased. In a later study, Ando and Hattori (ref. 233) found human placental lactogen (HPL) to be lower in the serum of expectant mothers in areas of high aircraft noise than in areas of low noise. (See fig. 10.64.) It is highly likely that these effects, if valid, are due to feelings of fear and annoyance engendered in the mothers and are not due to any acoustic energy transmitted to the fetus through tissues or fluids of the mother's body.

EXHIBIT H

Effects of Noise

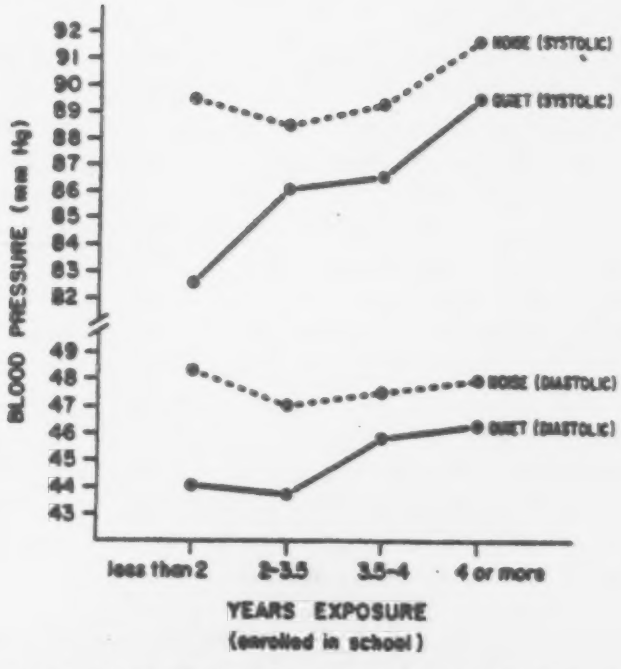

FIGURE 10.63. Systolic and diastolic blood pressure as a function of school noise level and duration of exposure. Each period on the years-exposure coordinate represents approximately one quarter of the sample. (From ref. 228.)

= HIGH AIRCRAFT NOISE AREA

= LOW NOISE AREA

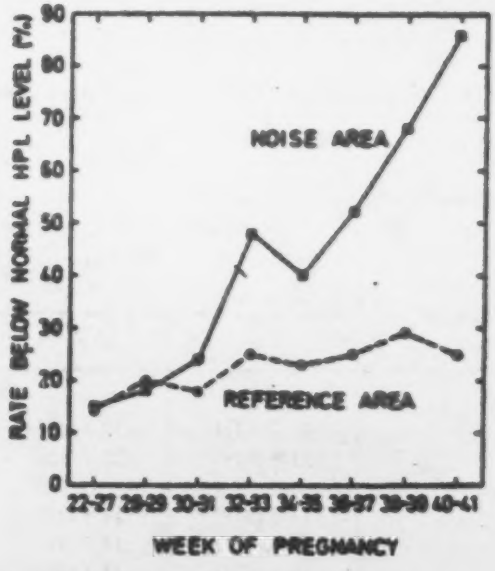

FIGURE 10.64. Percentage of subjects with HPL levels more than one standard deviation below the mean by stage of pregnancy. (From ref. 233.)

HPL = HUMAN PLACENTAL LACTOGEN

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EXHIBIT I

Nonauditory-System Response to Noise and Effects on Health

In the Ando and Hattori studies the socioeconomic status and the environmental factors (other than the noise) of those exposed and not exposed to the noise were felt to be reasonably similar. In the analyses of birth weight data from hospitals in six villages near the Amsterdam airport, Knipschild *et al.* (ref. 232) attempted to control the following factors: family income, birth order, and sex of the infant. Only single birth infants (no twins) were considered. Table 10.18 shows that significantly more female infants had birth weights below 3000 g whose mothers' lived in high levels of aircraft noise (L_{dn} = 65 to 75) than in low levels of noise (L_{dn} < 65). A further division of L_{dn} = 65 to 75 into L_{dn} of 65 to 70 and 70 to 75 found 23 and 29 percent, respectively, of all infants with birth weights below 3000 g. As shown in the table the percentage was 18.1 percent for all infants from areas with L_{dn} < 65.

Rehn, according to Knipschild *et al.* (ref. 232), did not find a significant relation between birth weight and aircraft noise in the city of Dusseldorf. Knipschild *et al.* suggest that the differential age and socioeconomic factors favoring the higher noise areas (an unusual condition for most cities) may have contributed to Rehn's findings.

Schell (ref. 234) studied the effect on the length of gestation and on the birth weight of infants of mothers who were exposed to aircraft noise while pregnant. A multiple-correlation analysis technique was used to partial out the effects of the mother's height, weight, age, and smoking habits, and the father's weight

TABLE 10.18

Birth Weight Statistics as a Function of Noise Level

[Data from ref. 232]

Socioeconomic category and sex of infant	Infants, percent, with low birth weight[a] for L_{dn}, dBA, of— (b)		
	<65	65 to 75	<75
Low income:			
Female	17.0 (112)	30.3 (175)	25.1 (287)
Male	21.8 (119)	22.7 (150)	22.3 (269)
High income:			
Female	17.9 (84)	24.4 (82)	21.1 (166)
Male	14.6 (89)	14.3 (91)	14.4 (180)
All infants	18.1 (404)	24.1 (498)	21.4 (902)
Adjusted[c]	18.1	23.8	

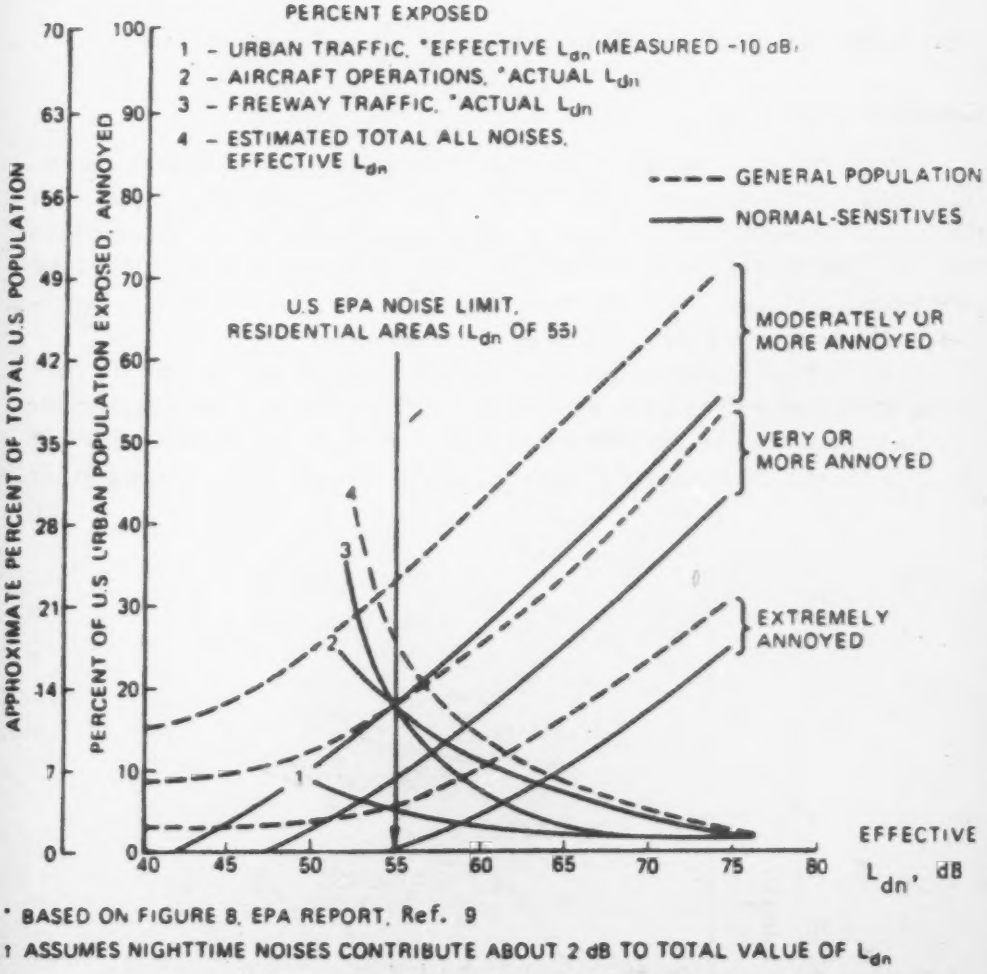
[a] *Birth wrights less than 3000 g.*

[b] *Number of infants tested given in parentheses.*

[c] *Combination of the two populations used as standard population.*

EXHIBIT J

Effects of Noise



* BASED ON FIGURE 8, EPA REPORT, Ref. 9

† ASSUMES NIGHTTIME NOISES CONTRIBUTE ABOUT 2 dB TO TOTAL VALUE OF L_{dn}

FIGURE 11.18. Percentages of U.S. total and urban populations exposed to a given actual and effective L_{dn}, and the levels of annoyance felt by normal-sensitive people thus exposed. The effective level of urban traffic noise relative to aircraft noise is actual (measured) L_{dn} minus 10 dB.

and that of that part of the general population, about 33 percent are "moderately or more annoyed," 17 percent are "very or more annoyed," and 5 percent are "extremely annoyed." These percentages are reduced somewhat (solid curves) when the data are normalized for atypical responses. Although not shown in figure 11.18, at an L_{dn} of 55 dB, 55 percent of the general population and 30 percent of the normal-sensitives are "a little or more annoyed."

The curves for annoyance are based on attitude surveys conducted in the spring and fall in northern climate cities. The curves could be adjusted upwards somewhat (equivalent to 5 dB of exposure) when projected to those expected in warm climate cities.

EXHIBIT K

Relations between Noise Exposure and Complaints and Costs

Complaint activity

Complaints, or rather lack of complaints, to authorities and legal and political actions by individuals and citizens are not as reliable or consistent measures of the effects of environmental noise on people as are attitude surveys of annoyance (ref. 74). The reasons for such variability include a variety of social, individual, experiential, and legal factors and constraints. However, some meaningful information can be obtained from records of complaints.

In an attitude survey conducted in the U.S. (refs. 37 and 39), people were asked, among other things, how annoyed they were by aircraft noise and whether they had complained to any authorities about the noise. The results, shown in figure 11.19, indicate that some complaints can be expected when 5 to 10 percent

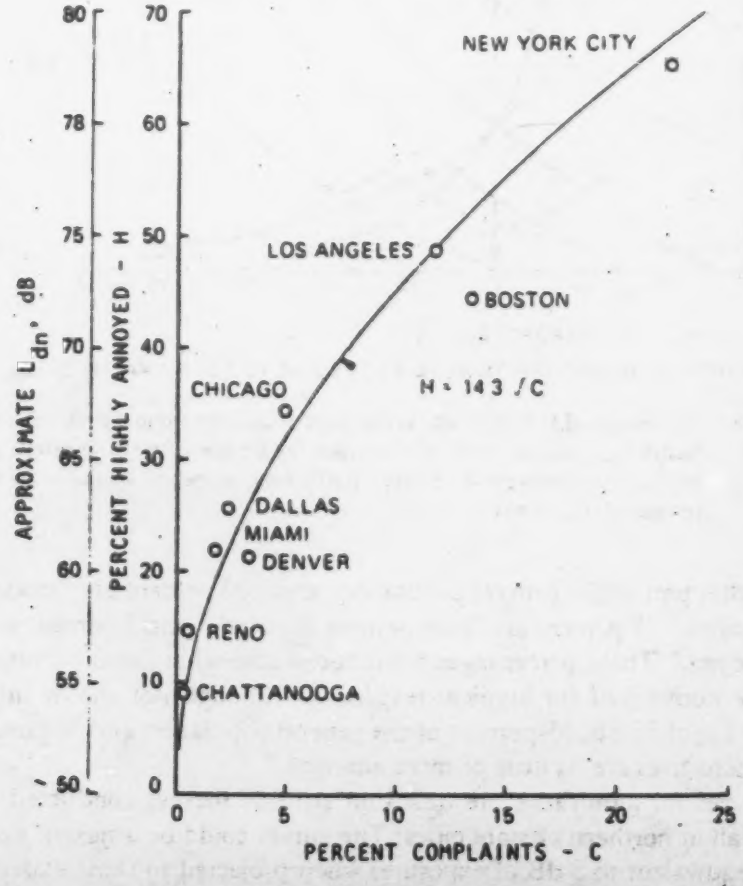


FIGURE 11.19. Percent of people who complained about aircraft noise as a function of percent highly annoyed and approximate L_{dn}. (From ref. 39.)

EXHIBIT L

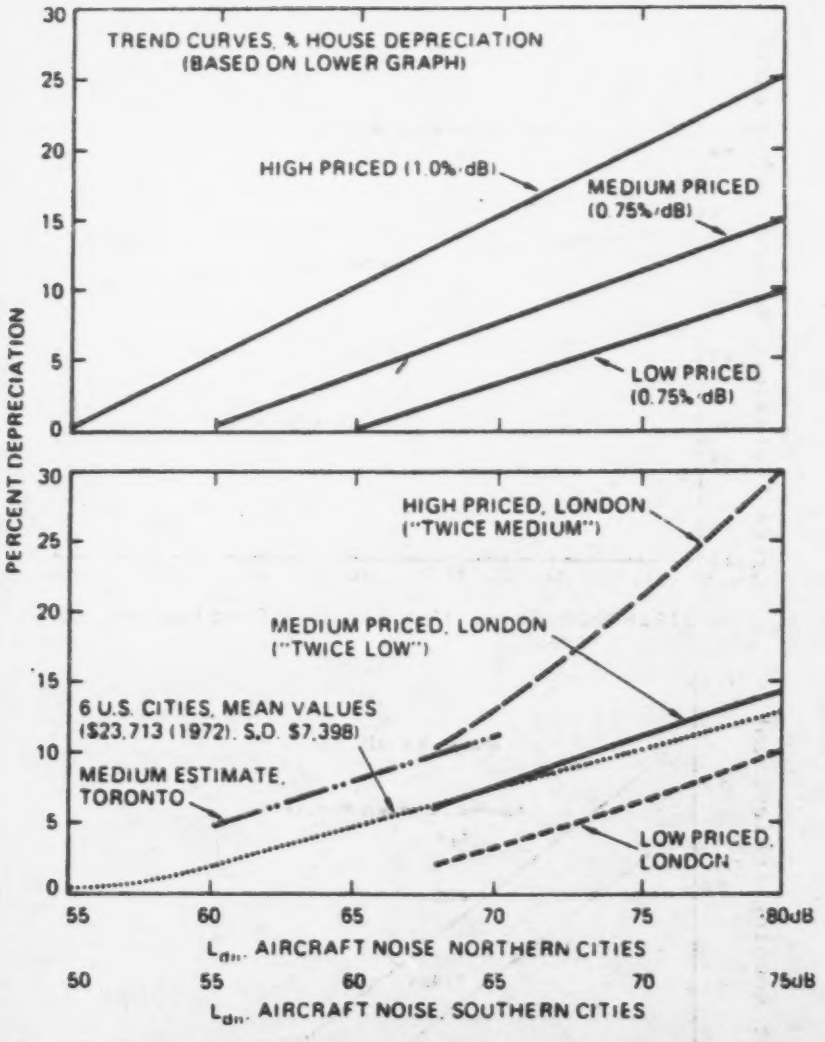
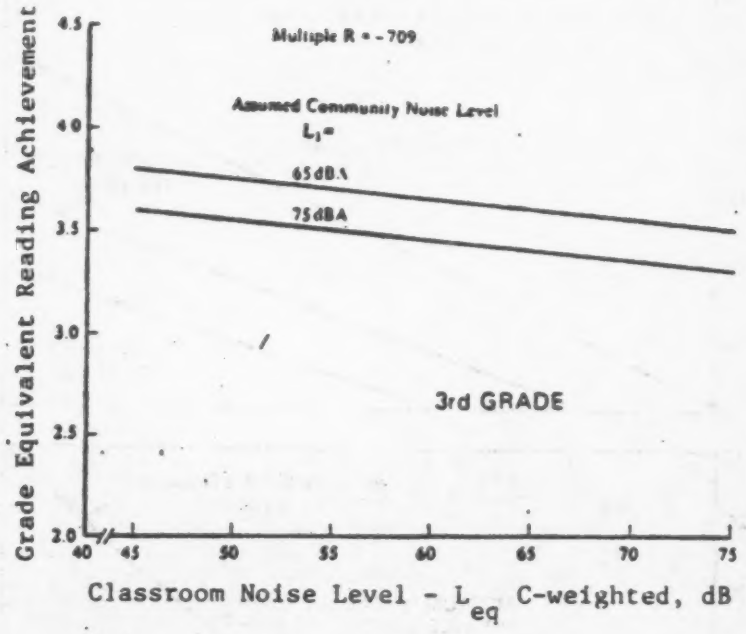


FIGURE 11.22. Depreciation of house values as function of aircraft noise near London (ref.81); near U.S. cities (San Francisco, St. Louis, Cleveland, New Orleans, San Diego, and Buffalo) (ref. 82); and near Toronto, Canada (ref. 83).

Taylor *et al.* (ref. 85) studied the effect of arterial and expressway road traffic noise on house prices in Ontario, Canada. They found that there was a depreciation of approximately 0.5 percent per decibel of ground traffic noise in the value of medium priced houses (average cost of $60 000) at a 24-hour L_{eq} of about 70 dB (an L_{dn} of about 72 dB). This compares roughly with the effect of aircraft noise on house costs at an L_{dn} of about 60 dB as shown in figure 11.22. This relative difference between the impact of the two types of noises on house costs is obviously consistent with 10 dB or so difference found in the effectiveness between

EXHIBIT M



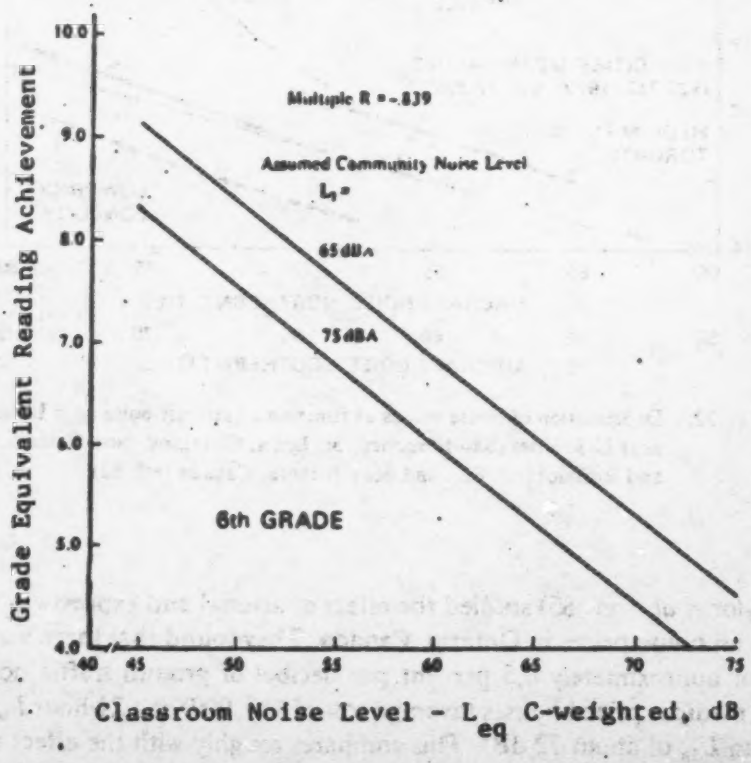


FIGURE 11.28. Relationship between achievement of third and sixth graders and classroom noise levels given different noise levels in the community. (Data from ref. 93.)

TABLE 12.1

Prior Recommendations of Sound Levels in Various Spaces

[Data from table D-10 of ref. 2]

	Knudsen-Harris 1950 dB(A)	Beranek 1953 dB(A)	Beranek 1962 dB(A)	Lawrence 1962 dB(A)	Kosten-Van Os 1962 dB(A)	Ashrae 1967 dB(A)	Kryter 1970 dB(A)	
Resident:								
Home								
Bedroom	35-45	35	35-45	25	30	25-35	40	
Living Room	35-45	35		40	35	30-40	40	
Apartment	35-45		35-40	30		35-45	38	
Hotel	35-45		35-45	35-40		35-45	38	
	USSR 1971 dB(A)	**Beranek 1971 dB(A)**	**Doelle 1972 dB(A)**	**Wood 1972 dB(A)**	**Rettinger 1973 dB(A)**	**Sweden dB(A)**	**Switzerland 1970 dB(A)**	**Czechioslovakia 1967 dB(A)**
Resident:								
Home								
Bedroom	35	34-47	35-45	35	34-42	25	35-45	40
Living Room	35	38-47		40		25	35-45	40
Apartment		34-47			38-42		35-50	40
Hotel	35	34-47	35-54	30-40	42		35-50	40

EXHIBIT O

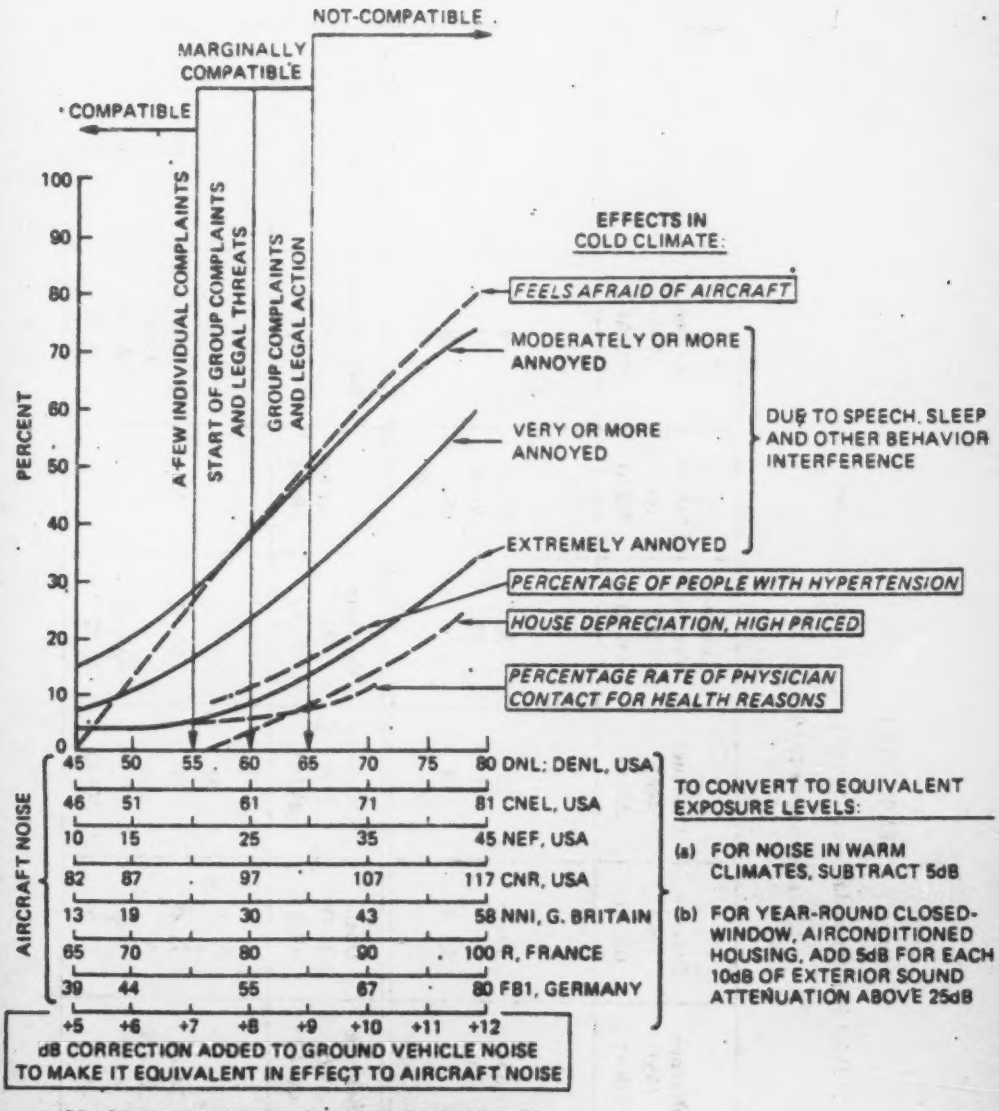

NOT-COMPATIBLE
MARGINALLY COMPATIBLE
COMPATIBLE
A FEW INDIVIDUAL COMPLAINTS
START OF GROUP COMPLAINTS AND LEGAL THREATS
GROUP COMPLAINTS AND LEGAL ACTION
PERCENT
100
90
80
70
60
50
40
30
20
10
0
EFFECTS IN COLD CLIMATE:
FEELS AFRAID OF AIRCRAFT
MODERATELY OR MORE ANNOYED
VERY OR MORE ANNOYED
EXTREMELY ANNOYED
DUE TO SPEECH, SLEEP AND OTHER BEHAVIOR INTERFERENCE
PERCENTAGE OF PEOPLE WITH HYPERTENSION
HOUSE DEPRECIATION, HIGH PRICED
PERCENTAGE RATE OF PHYSICIAN CONTACT FOR HEALTH REASONS
AIRCRAFT NOISE
45 50 55 60 65 70 75 80 DNL: DENL, USA
46 51 61 71 81 CNEL, USA
10 15 25 35 45 NEF, USA
82 87 97 107 117 CNR, USA
13 19 30 43 58 NNI, G. BRITAIN
65 70 80 90 100 R, FRANCE
39 44 55 67 80 FBI, GERMANY
+5 +6 +7 +8 +9 +10 +11 +12
dB CORRECTION ADDED TO GROUND VEHICLE NOISE TO MAKE IT EQUIVALENT IN EFFECT TO AIRCRAFT NOISE
TO CONVERT TO EQUIVALENT EXPOSURE LEVELS:
(a) FOR NOISE IN WARM CLIMATES, SUBTRACT 5dB
(b) FOR YEAR-ROUND CLOSED-WINDOW, AIRCONDITIONED HOUSING, ADD 5dB FOR EACH 10dB OF EXTERIOR SOUND ATTENUATION ABOVE 25dB
AVERAGE DAILY DOSAGE OF NOISE PRESUMED TO CONSIST OF APPROXIMATELY 75% OF NOISE EVENTS OCCURING BETWEEN 0700-1900 HRS; 17%-34% IN 1900-2200 HRS; AND 8%-16% IN 2200-0700 HRS

FIGURE 12.5. Graph showing, as a function of exposure level, effects of aircraft noise on annoyance, health, housing values, and complaint activity. Also indicated are suggested compatible and not compatible threshold levels for residential living and corrections to be applied for use with ground vehicle noise and in warmer (*e.g.*, southern U.S.) climates. Noise dosage is expressed in composite daily units used in the U.S. and in some European countries (see chapter 11).

GAO "TRANSPORTATION NOISE" OCT. 1989

EXHIBIT P

piece of land and the economic effects (ability to qualify for a mortga need to soundproof building interiors, and property resale value) of declaring land incompatible with certain uses. EPA, in its 1978 report, Protective Noise Levels: Condensed Version of EPA Levels Document, stated that outdoor yearly levels on the Ldn scale are sufficient to pro tect public health and welfare if they do not exceed Ldn 55 in sensitiv areas (residences, schools, and hospitals). This protective level, whic was not established as a standard, was derived without concern for technical or economic feasibility and contains a margin of safety to ensure their protective value.

Table 1.2 illustrates the effects of noise on people in residential areas various Ldn levels.

Table 1.2: Examples of Noise Effects in Residential Areas at Various Ldn Levels

Ldn level	Hearing loss	Percent of population highly annoyed	Average community reaction	General community attitude towards a
75 and above	May begin to occur	37	Very severe	Noise likely most important of all adverse aspects of the community environment
70	Will not likely occur	25	Severe	Noise is one of the most important adver aspects of the community environment
65	Will not occur	15	Significant	Noise is one of the important adverse aspects of the community environment
60	Will not occur	9	Moderate to slight	Noise may be considered an adverse asp of the community environment
55 and below	Will not occur	4	—	Noise considered no more important than various other environmental factors

Source: Guidelines for Considering Noise in Land Use Planning and Control, Federal Interagency Co mittee on Urban Noise, June 1980.

Table 1.2 shows the percent of people highly annoyed at the various Ldn levels. The percent of people reporting annoyance to a lesser exte would be higher in each case. For example, other studies have shown that at an Ldn of 55 decibels, 33 percent of the people are "moderatel or more annoyed," 17 percent are "very or more annoyed," and 5 per cent are "extremely annoyed." Thus, 55 percent of the general popula tion is a little or more annoyed at an Ldn of 55 decibels.[1]

[1]Karl Kryter, The Effects of Noise on Man, p. 564.

October 1, 1990

Honorable Thomas McMillen
1508 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Sir,

Please excuse the lateness of my letter as I just recently was informed of the House Aviation Subcommittee meeting on the Aviation System Capacity Task Force Recommendation for a National Noise Policy.

More detailed comments in that regard are attached for your consideration. In general, I oppose any attempts by the FAA to prevent local authorities &/or airports from inacting any noise restrictions (including bans). Such attempts (presently used by the FAA) include the withholding of funds, non-enforcement, outright veto, even litigation (all-the-while denying culpability for noise problems).

The present "Recommendation" is unacceptable as stated. Congress must reassert its authority over FAA and act in the best interests of the general public by opening the door for local airports & authorities to act in their best interests (in their particular situation for the good of their effected communities). This 'Right' should be permanent and not just for this 1 instance (Stage 2 Banning) when the FAA refuses to act. If the FAA continues to deny liability for Noise then it should stop trying to inhibit the actions of those it recognizes as liable (i.e., the local authorities & airports).

The year 2000+ is to long to wait for what is long overdue, technologically feasible, cost-effective, funding-available and in the public interest.

Sincerely,

Brian A. Kirby

Brian A. Kirby,
Glen Burnie Park Civic Assn.
Airport Representative to BWI
Neighbors & Environmental Committees
609 Elizabeth Road
Glen Burnie Park, Maryland 21061
(Home) 301-768-3499
(Work) 202-547-6006

AVIATION SYSTEM CAPACITY TASK FORCE
RECOMMENDATIONS

GENERAL:

The 40-50 Million people who suffer from Aviation Noise face a politically closed system which only allows their ability to complain, lobby and litigate; individually or collectively; at their own expense & on their own time vs. an Aviation Industry headed by an "untouchable" FAA. Despite available technology and funding the self-serving, self-fulfilling Aviation Industry, closes ranks on the Noise problem they have creat:d when confronted by the general public and their elected representatives.

"On the local level, airports may ban..."

This gives FAA guarantee of Stage II use til 2000 then shifts decision & responsility onto local authority. The implication is clear that the local authority 'may' chose 'not' to ban for the same self-serving reason, only on a smaller, closer-to-home level. Briefly put, the FAA will not make any decision (in their responsiblity) for ten years then dump it to the local level (which to-date has been denied any authority or responsility).

"...after Dec. 31,1999. ....locally established deadline will supersede the fleet phaseout provisions."

By the described fleet phaseout the compliance to can be stretched to 2004. In essence then, 'if' the local authority adopts a ban for 2000, it can easily extend to 2004.

"Airports will retain the ability to establish local noise restrictions on aircraft, subject to Federal review of restrictions on Stage 3 aircraft."

The FAA grants the responsility for Stage 2 phaseout to the local authority as a one shot act but maintains all responsibility in all other areas.

CONCLUSION ON RECOMMENDATION

The FAA should not be allowed to have it both ways. The FAA has withheld funds & litigated & threatingly advised (funding problems) airports & local authorities that have tried to impose restrictions on Stage 2 aircraft to-date as an usurption of their responsibility; even though the local authority has to deal with the problem. The local authority does not exist in a vacum unaware of the implications and problems of imposing restrictions or bans. The FAA should be stripped of the responsibility for protecting the aviation industry from local authority or airport restrictions or bans which do not violate the Constitution, threaten safety of the national system or require unavailable funds - effective immediately.

If however, it is determined that the FAA should maintain their responsibility (which they continue to abuse) then the Recommendation should be rejected and the FAA should inact a Congessionally approved national ban on Stage 2 aircraft, effective Dec. 31, 1999 without exceptions to comply with the wishes of the general public (and not the aviation indutry).

AIRPORT LAND USE AREA

If the local authorities & airports are able to implement restrictions (& bans) then far less funding will be required in the long run for land-use compatability programs. With only one airport built in the last 20 years, attempts to solve the noise problem at the "recipent" end are far more costly and less satisfying than solutions at the "generator" end. Eliminate noise at the source and there is far less to deal with at the receiving end.

As long as the FAA controls aircraft 'off' the ground failure to control the noise source can never be compensated for through land-use controls (especially, Easements, Zoning, & Sound-Proofing). The FAA certifies aircraft noise levels (clasifications) in a specific procedure - then, uses the aircraft in ways (takeoff procedures) which increases that noise level - then, constructs a noise zone using the 'certified' level 'averaged' [over 365 days of 24 hrs.] yearly for these Land-Use Compatability Programs, - instead of, the noise level & noise zone that would result from averaging the actual-recorded noise level of each Single Event (commonly known as the Lmax of SELs) - because, this way they can create a much smaller Noise Zone for program funding while appearing to benevolent & caring.

The pursuit of Easements is the driving force for most beneficial compatability programs (such as Sound-Proofing) to eliminate complaints from the public without solving the problem at the source. Requiring an Easement for a compatablity benefit is akin to blaming the 'recipient' for creating the noise problem.

ISSUE #4 (economic)

This is the same old concern that the Aviation Industry has promoted to prevent any resolution of this conflict to-date. As long as the business effect is placed in higher esteem than the 'general good' of the public the result is pre-destined. Immediate large costs always appear more ominous than long term costs which may in fact be greater.

Every Aviation Task Force created (to memory) has been dominated by those who use, profit-from, or work-in the Aviation Indutry. Correspondingly, this issue is elevated beyond the normal Congressionally-intended concern to 'Threat Status'. It will always deter positive actions even when 'technology' & 'funding' are available.

Statement of the Honorable Raymond J. McGrath (NY-5)

Public Works and Transportation Committee, Subcommittee on Aviation

Hearing on Federal Aviation Noise Policy

September 27, 1990

Chairman Oberstar, Mr. Clinger, members of the subcommittee, thank you for giving me the opportunity to testify today and for recognizing the need for hearings on a subject that causes such rage among my constituents.

In the short time allotted me here today, it is difficult to explain to you the entire scenario that is experienced by residents in my district nearly everyday of their lives. I fully understand their anger as my home is directly under a major flight path to John F. Kennedy International Airport and is only about three miles from the runways.

During the past summer months, the noise levels over our area have been unusually extreme. I am in constant contact with the Federal Aviation Administration at Kennedy and with the Town of Hempstead's noise abatement office regarding the rash of noise and have been assured that they are doing everything possible to minimize aircraft disturbance. Of course there are certain factors that contribute to the high noise levels, such as continued construction at John F. Kennedy International Airport along with the high humidity that forces pilots to utilize engines to maximum power. However, I believe that there are additional factors that can be addressed and solutions developed to alleviate the annoyance and the health hazards posed by low flying planes.

On the local level, when I came to Congress in 1981, virtually no flights entered or exited JFK over Queens because of political agreements made many years ago. That situation is now changing with use of a computer assisted system, better known as the East Coast Plan, which distributes aircraft traffic over the entire region. While many planes do take off and land over water, weather conditions and other air traffic do not always allow complete use of those routes.

Many of us here, including myself, initially hailed the East Coast Plan as a way to finally unclog the air traffic mess that had entangled one of the most heavily traveled routes in the world. However, I am most upset that the FAA, to my understanding, did not complete an environmental impact study before it implemented the plan. This, of course, is unsatisfactory and I am calling on the FAA to undertake a complete and thorough noise impact study in the immediate future.

Another step, and the one that I feel is paramount, is to implement a federal noise abatement policy. It is definitely time to address aircraft noise in a comprehensive fashion at the national level. By establishing nationwide goals and procedures for aircraft noise reduction, local authorities should no longer have to make extraordinary efforts to settle noise complaints in a piecemeal fashion with airport officials. The President's National Transportation Policy clearly stated that aircraft noise is a concern which deserves special attention. I want to make it clear that we must put that statement into action.

(3)

We must not, however, implement a policy that can be watered down by permitting exemptions for certain airports. I know that several years ago, hearings were held across the country in an attempt to formulate a national policy. It was determined that airports are like ballparks--all are of various configurations and specifications. In essence, the FAA concluded that a national noise policy could help in areas were airports are situated far from the city limits but that urban airports, such as JFK and LaGuardia, may be adversely affected by such a policy.

This is a good point, but one I think can be worked out by the airports and the FAA. We must have a policy--we can no longer stand idly by as residents of all ages suffer through sleepless nights and agonizing periods of air noise pollution.

Another area we must consider, but not rest on, is research and development. Here in Washington, I know many of you have actively supported research into quieter aircraft. Those efforts have resulted in the development of the so called "whisper jets" which are now in use. The jets are now perceptibly quieter than older aircraft. Use of wide body jets has also decreased the number of flights into JFK while actually transporting far more people.

Most older aircraft are classified by the FAA as "Stage II" aircraft, which, not surprisingly, are the noisiest. These include the Boeing 707,and 727; and the McDonnell Douglas DC-8, and DC-9. Aircraft built within the last five to ten years fall under the "Stage III" category, are quieter and include the Boeing 737, and 747; and the McDonnell Douglas DC-10.

(4)

Of course, the most effective method of limiting aircraft noise is to require that Stage II engines be either eliminated or upgraded. As I understand, however, the "hushkits" currently under production which are retrofitted on Stage II engines are inefficient and expensive. However, I am concerned that too great an emphasis may be placed on the development of Stage III engines. Stage III engines do help noise abatement, but they are far from silent. Seven percent of all noise violations reported at JFK come as a result of Stage III engines. We cannot fool ourselves into thinking that a full compliment of Stage III aircraft is on the horizon and if it was, will eliminate air noise.

In closing, we have, in many respects, a unique situation around JFK. Our communities are the most densely populated area adjacent to a metropolitan airport in the country. While many of my constituents would not mind seeing the airport shutdown for good, it is accurate to state that our local economy is heavily dependent on the continued use of Kennedy.

Mr. Chairman, Mr. Clinger, members of the subcommittee, again I want to thank you for this opportunity to testify. I am sure mine is not the only horror story to emerge from these hearings and I bet my colleagues from Northern New Jersey have painted an even gloomier picture. What must emerge from these hearings is a sensible approach to noise abatement -- coordinated between the Congress, the FAA and the local transportation agencies. There is no excuse for violation of noise restrictions, and together we can assure our constituents that we will continue to do everything possible to make our airports better neighbors.

TOWNSHIP OF READINGTON

WHITEHOUSE STATION, NEW JERSEY 08889

MUNICIPAL OFFICE
108 ROUTE 523
WHITEHOUSE STATION, N.J. 08889
PHONE: 201-534-4051
FAX: 534-5908

DOROTHY C. GRAY
TOWNSHIP CLERK/ADMINISTRATOR

October 3, 1990

Committee on Public Works and Transportation
Subcommittee on Aviation
Room 2165, 2167 Rayburn Office Building
Washington, DC 20515

Gentlemen:

Readington Township, Hunterdon County, New Jersey, regrets that we are unable to send a representative to attend this meeting on aviation noise policy.

Please enter our comments in the public record.

It is the feeling of the Readington Township Committee that local and state governments should continue to have the right to set noise standards for airport operations.

It is obvious that the technology exists today to lessen the impact of aircraft noise. Without an incentive to do so (local or state noise regulations) owners of aircraft will avoid the costs involved.

Expanded runways or operations may change the mix of aircraft using a facility often to the detriment of adjoining neighbors. While we have little sympathy for those people who buy near an airport and cry for its closing, we do feel all citizens residing near airports should have protection from increased noise due to increased operations or change in aircraft using the facility. Local governments being the ones closest to the problem would be able to react faster.

Over the years, we have seen the erosion of local control of Government by the State and Federal Government, in the guise of better service, this has not always occurred. Instead private interests, which do not have the public good in mind stand to prevail. Remember, bigger is not always better.

Very truly yours,

Stephen R. Mirota

Stephen R. Mirota
Mayor, Readington Township

TESTIMONY OF STATEN ISLAND BOROUGH PRESIDENT

GUY V. MOLINARI

BEFORE THE HOUSE SUBCOMMITTEE

HEARING ON

FEDERAL AVIATION NOISE POLICY

October 4, 1990

People resent government most when officials shield their actions behind a wall of regulations which they themselves create. The law and its interpretation must be fluid to meet the needs of situations and citizens. The foresight to review and compare a piece of legislation or regulation with respect to how it has directly or indirectly affected the people during changing times must be an integral part of government. In short, when government makes a mistake, it must be willing and able to correct that mistake. The Federal Aviation Agency and Port Authority of New York and New Jersey have made a serious mistake with regard to aircraft flight patterns out of Newark, New Jersey, and must now correct that error.

The National Environmental Policy Act of 1969, among its other excellent provisions, states the following:

- "...to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man..."

- "...The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization ... and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government in cooperation with State and local governments, and other concerned public and private organizations, to use all practicab means and measures... in a manner calculated to foster and promote the general welfare..."

- "...Nothing in ... this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standard of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendation or certification of any other federal or State agency..."

Furthermore, Executive Order No. 11514 of March 5, 1970, 35 F.R. 4247, Protection and Enhancement of Environmental Quality states:

- "...Heads of (Federal) agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment..."

- "...Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties..."

- "...Review their agencies' statutory authority, administrative regulations, policies, and procedures...in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act."

Nowhere in these words, or in the Act itself, is there a declaration that the Federal government or its agencies are to operate alone or in a vacuum. What I read in the legislation is an across-the-board mandate for cooperation and communication at all levels of government by the Federal government and its representative agencies.

I highlight these legislative dicta because a majority of environmental actions during the past two decades have been motivated by what are now nationally accepted as basic rights. But it appears that there are ways to get around these responsibilities without the public's direct knowledge.

I have come to this conclusion because of a serious environmental problem that has been plaguing several communities on Staten Island from flights emanating out of Newark Airport. To quote from the Port Authority of New York and New Jersey's "Airport Highlights - 1989":

- "After some experience with the new noise pattern created by the Expanded East Coast Plan for aircraft routing implemented in 1987, additional modifications were instituted by the Federal Aviation Administration and Newark International Airport air controllers in 1989. The new flight departure procedure ... allows 20% of northbound aircraft using Runways 22R and 22L for departures to fly directly north rather than being funneled out together with westbound traffic. Intended to relieve noise levels for such communities as Cranford, Colonia and Scotch Plains, this modification allows aircraft to more closely follow routes in use prior to implementation of the East Coast Plan. In January, 1990, the FAA further redistributed aircraft by fanning westbound departures from a point five to ten miles south...Contin complaints to the Port Authority and Federal Aviation Administration raise questions as to the effectiveness of these changes."

For the past nine months, my office has been inundated every day with calls complaining about the incredible hardships on daily living brought on by aircraft noise that fills the skies above the Arlington and Mariners Harbor communities, located on the northwest corner of Staten Island.

Furthermore, for the past three to four months, we have started getting calls from residents who are much further south and east of Arlington, in communities like Princes Bay and Great Kills. Are these people exaggerating their hardships? Consider the following:

- On July 9, 1990, between 9:30 AM and 12:30 AM, and on July 10, 1990, between 8:30 AM and 12:30 PM sound measurements were taken at a location in Arlington. The ambient noise level in this area is about 55-56 dB (A). The hourly noise level was an Leq of 77.1 dB (A), with a single event high of an unbearable 102 dB (A).

Bear in mind that this was a test that was done on two separate days, lasting only four morning hours each day, and on a weekday. The EPA guidelines that the FAA uses for outdoor sound levels identified as a requisite to protect the public health and welfare with an adequate margin of safety is an Leq of 70 dB. That's 70 decibels and the study shows that that guideline is being violated <u>every hour</u> in Arlington!

- The Port Authority's "Departure Analysis of Aircraft Carriers by Aircraft" for the month of July, 1990, shows that, for runways 22L and 22R, a total of 7,193 aircraft took off. That is an average of 240 planes per day, ten planes per hour, off a single runway!

- Nowhere in the PA's highlights do they mention New York City communities, only New Jersey communities. If one measures from the end of runway 22 to Cranford, it is approximately 6 miles: to Colonia, it is approximately 10 miles: and to Scotch Plains, it is approximately 13 miles. My distinguished colleagues, Arlington, Staten Island, is a mere 3 miles away! And there is no mention of this in the PA report as the community that will be most affected by the changes!

What have repeated inquiries by my and my daughter's offices to the FAA produced?

- In an August 13, 1990, response to one of my letters, the regional administrator, Mr. Daniel Peterson, stated "... The Newark Standard Instrument Departure Three may have created noise issues over Staten Island that we did not anticipate; and therefore we are reviewing the initial portion of the climbout and will consider alternatives...We will simulate these alternatives in the Electronic Target Generator at the New York Terminal Radar Control Facility..."

- In a September 5, 1990, response to a letter from Congresswoman Molinari "...The aircraft then execute a right turn to a heading of 220 degrees to fly along or in close proximity to the Arthur Kill waterway, thereby avoiding any heavily populated areas. Our office is aware that variation in flight track over the ground does occur...When Air Traffic Controllers notice that aircraft are not flying along the desired ground track, corrective vectors are issued to the pilot."

The environmental engineer for my office has been told by the FAA that no environmental impact statement is needed if air traffic changes occur above 3,000 feet. This is called a "categorical exclusion." In addition, the FAA does not have a historical record as to how this 20-year-old internal directive came about or when the last time was that it was reviewed for relevancy to present conditions.

How do I interpret these various pieces of information? I see a sorry picture of environmental directives being shunted aside by appointed agency heads in the name of "It doesn't fit into what we have been doing and saying for years".

I see statements being made whereby an agency admits publicly to not anticipating a serious environmental problem, then doing nothing to correct it, and, finally, performing only computer-simulated analyses of flight patterns that have nothing to do with solving the environmental problem at hand.

Yet, I see the FAA miraculously changing La Guardia airport flight patterns over tennis matches in New York City by admitting "... when safety and other conditions permitted, planes would be diverted away from the park so that the high-pitched whines of their engines would not distract players or fans."

I see a non-spirit of cooperation and the discriminatory shifting of a burden from location A to location B, either through political pressure based on the size of constituents' vocal chords or through an agency dictating its interpretation of environmental laws.

I see, finally, all this being done silently, without accountabili to the general public.

The FAA and the Port Authority of New York and New Jersey have reneged on their responsibility to the public, a public that extends beyond the borders of one state.

I quoted earlier the environmental intents and responsibilities from the Federal level. Recent judicial interpretations of New York State Environmental Conservation Law, Article 8-0109:3, have shown that the definitions of a state agency and local agency include every governmental entity, including authorities, which in the past have been immune from much public disclosure of their activities.

Finally, the New York State Conservatiion Regulations indicate that an important consideration in deciding the need for an environmental impact statement is substantial adverse change in air quality or noise and the impairment of community character.

Clearly, the intent of the laws has not been followed, and, sadly, the defined responsibilities of our agencies have been viewed as no more than an interfering nuisance. I am, therefore, insisting that:

- A joint public hearing be conducted on Staten Island with the FAA, Congresswoman Molinari's office, and my office in order to set the record straight as to what options exist to address this ever-increasing chronic environmental problem, and,

- A daily noise study be performed for at least a one month period in all the Staten Island communities that have been complaining of chronic noise pollution including Arlington, Mariners Harbor, Princes Bay and Great Kills.

Let us start communicating and cooperating as responsible parties who represent the interests of the American public. Thank you for this opportunity.

October 1, 1990

Mr. David Traynham
Committee on Public Works and Transportation
2165 Rayburn House Office Building
Washington, DC 20515

Re: Federal Aviation Noise Policy

Mr. Traynham:

The need does exist for changes to be made to the Federal aviation noise policy. The policy should be modified to prohibit the operation of Stage 1 and Stage 2 aircraft in a timely manner - not by the year 2003 as currently proposed by the airline industry.

This is certainly a more realistic approach to alleviating aircraft noise than that advocated by those persons in opposition to the Expanded East Coast Plan. They are actively campaigning to have the Plan rescinded.

We support the Expanded East Coast Plan and do not want to have it rescinded.

We live within the Solberg Airport area of Readington Township, New Jersey. Prior to implementation of the Plan, our home was under the path of the one 'highway in the sky'. Now that that highway has been expanded, we have noticed a significant decrease in the noise generated from planes flying over our home.

Amid all of the controversy concerning aircraft noise, let us not lose sight of the original purpose of the Plan - to decrease the risk of aircraft disasters and to reduce flight delays. All indications are that these objectives have been met.

Today's aircraft noise is a fact. We should be working to find viable ways to reduce this noise to ensure all residents have the opportunity to enjoy a noise-free environment - without losing sight of the original purpose of the Plan. To suggest that the Plan be rescinded is not a viable solution. It is inconceivable to me that suggestions have been made to do just that.

Ann VanSickle

Richard VanSickle

Ann VanSickle
17 Forty Oaks Road
Whitehouse Station, NJ 08889

cc: Mr. Joseph Italiano

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